

Volume 6

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Nathanael M. Cousins, Magistrate Judge

DARYELLE LAWANNA PRESTON,

Plaintiff,

VS.

NO. C 14-02022 NC

CITY OF OAKLAND; DEANNA  
SANTANA, in her individual  
capacity; and DOES 1 through  
10, inclusive,

Defendants.

San Francisco, California  
Monday, September 21, 2015

**TRANSCRIPT OF PROCEEDINGS**

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8:06 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard outside the presence of the jury:)

5 **THE COURT:** Please be seated. Welcome back.

6 All right. As anticipated, jurors are not present. Is  
7 Mr. Siegel with us?

8 **MS. MEHTA:** He'll be right here.

9 **THE COURT:** All right. I'll hold on for him for a  
10 moment.

11 **MS. MEHTA:** Thank you.

12 (Pause in proceedings.)

13 **MR. SIEGEL:** Good morning, Your Honor.

14 **THE COURT:** Good morning.

15 All right. Let's talk about some of the logistics, and  
16 then some of the legal issues to be determined for our Final  
17 Jury Instructions, and Verdict Form. This weekend I published  
18 to the parties the proposed Final Instructions and Verdict Form  
19 in Dockets 158 and 159.

20 First, a little record clean-up. Both sides put on  
21 testimony of experts. Plaintiffs had Dr. Ogus. Defense had  
22 Mark Cohen. There was no objection from either party to the  
23 expert testimony of either witness. The magic language of them  
24 being tendered as witnesses was not used, but I did find them  
25 to be proper expert witnesses within the confines of what you

1 had previously disclosed before trial. And I did permit and do  
2 find them to be appropriate experts as tendered. And I wanted  
3 to put that on the record.

4 There was objection to rebuttal testimony being provided  
5 by Mr. Cohen, and that was because there had not been before  
6 trial a disclosure of a rebuttal report by Mr. Cohen where he  
7 opined as to his disagreement or agreement with Dr. Ogus'  
8 report. So I did not permit testimony beyond the confines of  
9 what has been disclosed before trial.

10 I posed a question to the parties on Friday about  
11 subject-matter jurisdiction, to see if you had any -- and I  
12 gave -- my tentative view is there is supplement jurisdiction  
13 under 28 U.S.C. 1367(c), and intended to keep the case for the  
14 remainder of trial.

15 Any objection to my tentative view?

16 **MR. LAFAYETTE:** No, Your Honor.

17 **MR. SIEGEL:** No, Your Honor.

18 **THE COURT:** All right. Ms. Lara will be coming back  
19 to the stand at 10:00 o'clock. What's the expected remaining  
20 time for her? And let's talk about kind of the schedule for  
21 this morning.

22 **MR. LAFAYETTE:** I think I have about 20 to 25 minutes  
23 for Ms. Lara. I think I have about 20 to 25 minutes with  
24 Ms. Santana. And then it's my expectation I will rest.

25 **THE COURT:** All right. Mr. Siegel, you've made

1 reference to keeping your options open for rebuttal. What are  
2 your intentions, based on the proposition that there will be  
3 about 50 minutes remaining of direct examination?

4 **MR. SIEGEL:** So far we have no plans to present  
5 rebuttal.

6 **THE COURT:** All right. If that remains your plan --  
7 of course, I'll check in with you again once the Defense  
8 rests -- I would plan then, time permitting, to give the Final  
9 Instructions to the jury probably at that time, take a lunch  
10 break, and come back from the lunch break for the closing  
11 arguments, if everything's following according to the schedule  
12 that you've proposed.

13 Let's talk about the exhibits that will go to the jury.  
14 So both parties have, of course, put in a number of paper  
15 documents. There's one video. Right now there's not a single  
16 one or two binders that have the evidence that's in evidence,  
17 and others been excluded. So right now we have a record of  
18 what's in evidence. We have binders that have more than what's  
19 in evidence. And we only want to give the jury what's in  
20 evidence.

21 So I want to -- and we've been keeping track, of course,  
22 and publishing each day the minutes.

23 Based on what you've reviewed, has either party identified  
24 any errors in what the Court has stated is in evidence or not  
25 in evidence; the minutes reflected in the Court records?

1           **MR. LAFAYETTE:** No, I have not, Your Honor.

2           **MR. SIEGEL:** I have not, either.

3           **THE COURT:** Correct. So it might be ideal if we had  
4 a table of contents for the jury as to what's in evidence,  
5 similar to what I have, which is something -- a document that  
6 has its number and information on --

7           Yes.

8           **MR. LAFAYETTE:** I think my office did such a thing  
9 this weekend. And it may need to be tweaked, but I will call  
10 my office and see if they could do that. They may be able to  
11 even assemble a smaller binder that includes the things that  
12 were in evidence; and if so, I'll try to get that up here this  
13 morning.

14           **THE COURT:** That would be great. I think that would  
15 be a good idea. It's not mandatory for the jury to review it,  
16 but I think helpful to understanding if there was something  
17 that showed an exhibit number. If there's a document  
18 description that's unobjectionable from both parties, that  
19 would be great.

20           Yes.

21           **MR. LAFAYETTE:** And I think the document has a  
22 corresponding key, so that you can see the Plaintiff's  
23 Exhibit Number and Defense Exhibit Number.

24           **THE COURT:** I think that would be good. So ideally  
25 if we had a single binder -- or two binders if it doesn't fit

1 in one binder -- that says, "Evidence for the Jury to  
2 Consider," that would be great. Of course, I want plaintiff to  
3 be able to see it and agree to it, too. And maybe, plaintiff,  
4 you have your own -- Ms. Preston has her own list, and so  
5 forth.

6 And I will check it against mine. So if we can get that  
7 here before lunch, I can look at it during lunch and make sure  
8 I have no problems with it. And -- but let's make that our  
9 plan.

10 If we don't get that document here, then I'm putting it  
11 upon the parties to still work together to get a binder  
12 together that's going to be the things for the jury to review,  
13 and to make sure that we have your okay before the jury starts  
14 looking at it. Our objective is not to have them inadvertently  
15 look at some document that's not in evidence, and then us have  
16 to figure out how to fix the problem. So we'll try to get that  
17 right ahead of time.

18 Are the parties intending to play the video during closing  
19 arguments?

20 **MR. SIEGEL:** Yes.

21 **MR. LAFAYETTE:** I think both of us will.

22 **THE COURT:** All right. And do you have a plan as to  
23 which hardware you're going to use to display it?

24 **MR. SIEGEL:** Yes.

25 **THE COURT:** What is your plan?



1           **MR. SIEGEL:** We have the laptop set up here. And  
2 we're ready to go when I make the argument.

3           **THE COURT:** So same way it was done during the  
4 examination? Same laptop, or you're going to use your laptop  
5 this time?

6           **MR. SIEGEL:** Yes. It's got some other things on  
7 there we're going to use, as well.

8           **THE COURT:** You've tested it. We're ready to go  
9 technologically? I knocked on wood for you. All right. Very  
10 good.

11           And then what is your intention as to the jury's review of  
12 that video during their deliberations?

13           **MR. LAFAYETTE:** I guess we have not set -- I  
14 apologize, Your Honor. I think you were suggesting a computer  
15 with basically nothing on it but this?

16           **THE COURT:** I was inviting you to ask for that; but I  
17 did say, when I said it, that it needed to be asked for more  
18 than a few minutes before it's actually going to be used. So  
19 that your request? And if so, can you specify for me what the  
20 media that you are going to insert into it is, and what  
21 software it needs to run on?

22           **MR. LAFAYETTE:** I think we can put it on flash drive.  
23 Okay?

24           **THE COURT:** And what format is the video?

25           **MR. LAFAYETTE:** Kelvin's not in here. I think it's

1 the --

2 MR. SU: MP4.

3 THE COURT: Does it have any funky encryption?

4 MR. SU: It does not.

5 THE COURT: Okay. And is it going to be -- are you  
6 going to have isolated just the part for the jury that's in  
7 evidence?

8 MR. SU: Just the part that we played.

9 THE COURT: All right. Does that mean that the rest  
10 of the document can't be viewed by the jury? So is there a  
11 clip that has only the part -- how are we going to prevent the  
12 jury from watching other parts of the video?

13 MR. LAFAYETTE: It's only that piece.

14 THE COURT: All right.

15 MR. LAFAYETTE: We cut that from the --

16 THE COURT: So you've got it cut? Precut? And  
17 there's nothing else on the flash drive, except for that file.  
18 Correct? So it's going to be a flash drive with a single thing  
19 on it, which is this video, and nothing else. All right.

20 Barbara, I may ask or Jean to ask Stefan or someone from  
21 the IT Department to see if we can use the Court's computer  
22 with the capability to view on a flash insert an MP4 file  
23 during the deliberations.

24 All right. So we'll get that request going, with the hope  
25 that it's available and can be used by the jury.

1 All right. What are your contemplated closing-argument  
2 durations?

3 MR. SIEGEL: I am planning on approximately 50  
4 minutes for my argument, and 20 minutes for my rebuttal  
5 argument.

6 THE COURT: Five zero? Fifty minutes, you said?

7 MR. SIEGEL: Yes.

8 THE COURT: And for the Defense?

9 MR. LAFAYETTE: I'll tell you, Your Honor, I'm always  
10 bad about this. I think it's about an hour, but I don't --  
11 that's what I think.

12 THE COURT: All right. I think an hour would be an  
13 appropriate amount of time for the closing arguments. And I'm  
14 not going to shut you down if you're a little bit over that.

15 At the same time, my professional advice is that the  
16 attention span of the jurors might end sooner than an hour.  
17 And at some point after an hour, especially if it's after lunch  
18 and it's warm in here, you might be not helping yourself for  
19 going beyond an hour. That's for you to decide.

20 I will be watching for their glassy expressions to see if  
21 anyone's eyes are closing. And you should be attending to  
22 that, too. And if it's my glassy expression, then we  
23 particularly have a problem; but let's shoot for an hour, and  
24 not more than that.

25 Once we get into the deliberation time period -- of

1 course, I think it looks like it will be likely we might have  
2 some deliberations today. Stay close by, and give your phone  
3 number to my deputy so that you can be reached.

4 After the trial if there is a verdict reached -- or  
5 whether or not -- once we reach the end, my policy on speaking  
6 with the jurors is that I will discuss with them the potential  
7 interest of the attorneys to talk with the jurors after the  
8 trial. They're not required do that, of course. I give them  
9 the option of coming back in here to talk with you if you would  
10 like to talk with them; or exiting out the back door, and not  
11 speaking with you. And I just ask you to respect their  
12 decision if they don't want to speak with you, to let them go;  
13 and if they do want to speak with you, to be respectful and to  
14 discuss with them what you can do better the next time, and  
15 what worked and didn't work. And that will be here in the  
16 courtroom.

17 So I'll give them that option. They've got two doors to  
18 go through. And I think can be helpful to get feedback from  
19 the jurors about their experience.

20 Does that work for everybody?

21 **MR. LAFAYETTE:** Yes, Your Honor.

22 **THE COURT:** All right. Any other issues before we  
23 turn to the Jury Instructions and Verdict Form?

24 **MR. LAFAYETTE:** Just one item, Your Honor.

25 In the interest of efficiency, I thought I would let you

1 know that with Ms. Santana, there are three documents that I  
2 may use. And I wanted to alert you to what they were.

3 **THE COURT:** I appreciate that. Which are the three  
4 that you're -- these are three documents you're going to move  
5 into evidence, or just three that you're using?

6 **MR. LAFAYETTE:** Yes; that I will move into evidence  
7 1N, 1Q, and 1T.

8 **THE COURT:** N, Q, and T. Right?

9 **MR. LAFAYETTE:** Yes.

10 **THE COURT:** Give me a moment to refresh my memory as  
11 to what those documents are.

12 1N and 1Q did not have a pretrial objection.

13 1T did have a pretrial objection both for relevance,  
14 Rule 403, and hearsay under Rule 802.

15 Does Ms. Preston maintain her objection to 1T?

16 **MR. SIEGEL:** Yes.

17 **THE COURT:** All right. And let's start with  
18 relevance. What is the probative value of 1T?

19 **MR. LAFAYETTE:** It shows a discourse between  
20 Ms. Santana and Ms. Preston in the June time period  
21 specifically about the labor negotiations, and with regard to  
22 information that's being shared with the union unfiltered. And  
23 this is happening just prior to the issues that arise with  
24 regard to the bargaining of the TPT of the -- with the Fire  
25 Department. It's basically an e-mail stream between the two of

1 them, where Ms. Santana is pointing out to Ms. Preston and  
2 Ms. Preston is writing back with regard to the way in which  
3 this process is being managed.

4 **MR. SIEGEL:** I have a hard time seeing the relevance  
5 to any of the issues in the case. And we may start getting --  
6 having a side inquiry into the budget process. It's going to  
7 take a lot of time.

8 **MR. LAFAYETTE:** It really goes to her performance.  
9 It's not the budget. It's her performance. And she's  
10 basically criticizing her for giving documents to the union  
11 without first looking at them. It's Ms. Preston then going to  
12 the extreme and saying, "I don't manage the budget," when  
13 that's not the issue, at all. This is not about the budget.  
14 This is about the process.

15 **THE COURT:** My ruling on Document 1T is that the  
16 objection for lack of relevance and under Rule 403 is  
17 sustained. The document, if probative, would be -- the value  
18 would be substantially outweighed by the danger of confusion  
19 and distraction of the jury, because most of this document  
20 concerns costs, you know -- cost process, budgeting process --  
21 and deals with facts that so far have not been presented to the  
22 jury.

23 There's an e-mail string here that -- to go through the  
24 entire string would bring up issues that have not been  
25 presented to the jury yet, and would likely take a lot of time

1 for them to understand. And, if relevant of anything, that  
2 relevance would be outweighed by this lengthy period of time  
3 and confusion on things which are not central to the case.

4 So for those reasons 1T is excluded.

5 **MR. LAFAYETTE:** I would just say, Your Honor, that if  
6 you look at the last string where she says and your review and  
7 work with them can correct that -- this is really one where she  
8 is doing what Mr. Siegel has said has not been done, which is  
9 the coaching of her, and the explaining to her that she's not  
10 doing her job. That's the relevance of the document. And I  
11 think if Mr. Siegel's going to stand up and cite, as he did in  
12 his opening, that that's not something that was done, then I  
13 think that's what we're offering it for.

14 **THE COURT:** All right. The objection is sustained.

15 1N and 1Q will be admitted. They were not objected to  
16 before trial.

17 (Trial Exhibits 1N and 1Q received in evidence.)

18 **THE COURT:** All right. Any other issues from the  
19 Defense before we turn to the Jury Instructions and Verdict  
20 Form?

21 **MR. LAFAYETTE:** No, Your Honor.

22 **THE COURT:** And, Mr. Siegel, any other issues from  
23 Ms. Preston before we turn to the Verdict Form?

24 **MR. SIEGEL:** No.

25 **THE COURT:** All right. All right. Then turning to

1 the Jury Instructions, both parties had Documents 151 and 154,  
2 proposed special Jury Instructions that had instructions of the  
3 law as to particular provisions of the law that they suggested  
4 that we read to the jury for their deliberations.

5 Now the Court denies these proposals to include special  
6 Jury Instructions with the text of the state laws that Preston  
7 claims she reasonably believed City of Oakland employees  
8 violated, and I'm going to explain why.

9 California Labor Code Section 1102.5 requires that Preston  
10 disclosed or refused to participate in an act that she  
11 reasonably believed was a violation of state or federal law.  
12 As set out in my Summary Judgment Order, Docket Number 99, the  
13 Court interprets, quote, "reasonable belief of a violation of  
14 law," unquote, to mean that Preston must point to some legal  
15 foundation for her suspension, as outlined in *Love versus*  
16 *Motion Industries, Inc.*, 209 F. 2d. 1128, 1135, Northern  
17 District of California 2004.

18 A *prima facie* case under the Labor Code requires Preston  
19 to demonstrate her reasonable belief of a violation of law, and  
20 not that she prove that a law was actually violated.  
21 Therefore, the Court believes it would be confusing for the  
22 jury to be instructed on the content of the laws that Preston  
23 believed were being violated in more detail than they are being  
24 advised in my proposed Final Instructions. I'm concerned that  
25 the jurors could mistakenly believe that she should evaluate



1 precisely whether City of Oakland employees were violating the  
2 law. This would be unfairly prejudicial to Preston, because it  
3 would suggest it's her burden to prove more than what is  
4 necessary to prove a *prima facie* case under Labor Code Section  
5 1102.5. Therefore, in the proposed Final Instructions, I've  
6 included a more detailed summary of Preston's claims; but I  
7 will not instruct the jury on the specifics of the laws that  
8 Preston alleges she had a reasonable belief were violated.

9 Furthermore, the California Labor Code claim embodies the  
10 same principles as the federal Whistleblower Protection Act.  
11 And the California Appellate Court stated, in *Mize-Kurzman* --  
12 Mize, M-i-z-e hyphen K-u-r-z-m-a-n -- *versus Marin Community*  
13 *College District*, 202 Cal. App. 4th 832, 848, a 2012 case, that  
14 federal decisions can guide the interpretation of California's  
15 law, as the goal in provisions are essentially the same.

16 In the *Van Asdale* -- V-a-n space A-s-d-a-l-e -- *versus*  
17 *International Game Tech* case, 577 F. 3d. 989 at 997,  
18 Ninth Circuit, 2009, the Ninth Circuit held that, quote, "An  
19 employee need not cite a Code section he believes was  
20 violated," unquote, to qualify for protection under the  
21 Sarbanes-Oxley Act.

22 So for those reasons, I'm not intending to instruct the  
23 jury with the proposed instructions from the parties in Dockets  
24 151 and 154.

25 Now, starting with plaintiff, do you have any objection to

1 the Final Jury Instructions as proposed in Docket 158?

2           **MR. SIEGEL:** Well, Your Honor, I do believe that the  
3 proposed instructions that we presented on the law would be  
4 helpful to the jury in evaluating whether Ms. Preston had a  
5 good-faith belief in what she was talking about. Otherwise, it  
6 becomes kind of abstract, and allows one to assume or even  
7 argue that she didn't have a good-faith belief that the law was  
8 being violated. So that's why we proposed the instructions,  
9 and continue to do so. Otherwise, I have no objection to the  
10 Court's instructions.

11           **THE COURT:** And, of course, the Defense proposed  
12 different instructions on what the law is as to the statutes  
13 that she had a good-faith belief in, or from their perspective  
14 didn't have a good-faith belief in. So if we were to give your  
15 instructions of the law, should we also be giving their  
16 instructions of the law?

17           **MR. SIEGEL:** No. I mean, it's the plaintiff's burden  
18 to show that she had a good-faith belief.

19           It would just be to confuse the jury. You might as well  
20 give them the whole Labor Code and say, *Well, she couldn't have*  
21 *a good-faith belief that this 1500 sections were violated.*

22           The focus -- the effort should be to focus the jury on  
23 the -- on principles of law or statements of law that support  
24 the plaintiff's position. But -- so I thought that the  
25 instructions proposed by the Defense were just a diversion.

1           **THE COURT:** All right.

2           **MR. SIEGEL:** Again, you could propose any section of  
3 the law.

4           **THE COURT:** All right. Thank you.

5           And does the Defense have any objections to the proposed  
6 Final Jury Instructions?

7           **MR. LAFAYETTE:** Only -- not in the section you're  
8 speaking about, Your Honor, but it's different.

9           **THE COURT:** I want to take all objections now. So  
10 what is your objection?

11           **MR. LAFAYETTE:** It's on page 8, and it appears on  
12 lines 13 through 15.

13           **THE COURT:** All right.

14           **MR. LAFAYETTE:** And there are two comments that we  
15 would make. One: The statement that disclosure is protected,  
16 even though disclosing the information may be part of Preston's  
17 job duties. I have looked at the Ninth Circuit's opinion on  
18 this subject, and I think this Court probably has an opinion on  
19 this subject. The only thing I would point out is that, to the  
20 extent that this language actually appears in the statute --  
21 and I'm sure the Court's aware of this -- it didn't appear in  
22 the statute until 2014. It wasn't part of the statute in 2013,  
23 when all of the decisions were actually being made, and the  
24 facts arose in this case.

25           And I know that there is still an uncertainty. I know

1 that at some point after that, the State Legislature amended  
2 the statute. I think it was in 2013. 2013. And so this  
3 language didn't become effective in 2014.

4 And there are some cases that address summary-judgment  
5 motions, and whether summary-judgment motions should be granted  
6 on this theory; but that's a different story than whether or  
7 not the jury should be instructed that this is the law. And so  
8 I just believe that that statement shouldn't be there if it  
9 wasn't in the statute at the time. And that's my position.  
10 So -- and I will go to the second issue.

11 **THE COURT:** Go ahead.

12 **MR. LAFAYETTE:** The second issue has to do with a  
13 statement that -- we think this should be in there. And that  
14 is this section of the California Labor Code does not apply to  
15 violations of city ordinances, because it does not. And --

16 **THE COURT:** Can you direct me to the page and section  
17 you're referring to, as far as --

18 **MR. LAFAYETTE:** It's not in the Order, at all.

19 **THE COURT:** Where would it be in the instruction? If  
20 I'm going to --

21 **MR. LAFAYETTE:** It would be in the paragraph -- I  
22 would think it would be in the paragraph we were just looking  
23 at.

24 **THE COURT:** And tell me very precisely what it is  
25 that you think should be added.

1           **MR. LAFAYETTE:** Oh, just a second, Your Honor.

2           I may have directed you to the wrong location. I can give  
3 you the language, though. Quote, "This section of the Labor"  
4 -- "This section of the California Labor Code does not apply to  
5 violations of a City ordinance."

6           **THE COURT:** All right. Focusing on this language --  
7 Mr. Siegel, did you hear the proposed language?

8           **MR. SIEGEL:** Yes.

9           **THE COURT:** Do you agree to it, or disagree?

10          **MR. SIEGEL:** I disagree, Your Honor. I think in  
11 general, it's not good practice to advise the jury about what  
12 the law is not. The instruction affirmatively states that  
13 Preston must have reasonably believed that City of Oakland's  
14 policies violated federal or state rules or regulations. That  
15 certainly supports the Defense argument that merely violating  
16 Local Rules is not a violation, but doesn't have to be in the  
17 instructions. Again, it's just a negative. And there are a  
18 lot of things that don't fit here.

19          **THE COURT:** All right. I'm going to rule on this  
20 one. I'm going to take out the commas from that sentence, so  
21 there's not an inference that regulations is something  
22 different than federal or state rules. In other words, there  
23 could be an inference that regulations are City ordinances or  
24 City regulations, but it's not. "Regulations" is modifying  
25 federal and state rules.

1 I agree with Ms. Preston's counsel that that rule does  
2 not -- that sentence does not require the opposite to be stated  
3 in order for it to make sense. So I'm not going to give the  
4 additional instruction about what the law is not, but I will  
5 modify the sentence by taking out those two commas.

6 **MR. LAFAYETTE:** Which paragraph are you at,  
7 Your Honor?

8 **THE COURT:** Page 8, line 12. That's where it would  
9 make sense to add your proposed sentence if I were going to add  
10 it, but I'm not going to.

11 Mr. Siegel, what is your reaction to the proposal to  
12 delete the sentence on page 8, lines 14 to 15?

13 **MR. SIEGEL:** I think the instruction is correct.  
14 And, in fact, the California Supreme Court has concluded that  
15 that language in the revision to the statute was merely  
16 clarifying the intent of the law historically. And so -- and I  
17 can provide you with that citation pretty quickly, although I  
18 don't have it at the tip of my tongue; but again, the  
19 Supreme Court has said that was the law even before the recent  
20 legislative change.

21 **MR. LAFAYETTE:** Which cite is that, counsel?

22 **MR. SIEGEL:** The California Supreme Court.

23 **MR. LAFAYETTE:** Which cite it is it?

24 **MR. SIEGEL:** I just said I don't have the cite at the  
25 tip of my tongue.

1           **THE COURT:** All right. I'm going to go check on the  
2 case law and review that in a moment. So I'm going to take  
3 that argument under submission. And I'll be back in a few  
4 minutes to confirm.

5           And does the Defense have any response to the Plaintiff's  
6 argument about their special instruction on the law that they  
7 alleged was violated?

8           **MR. LAFAYETTE:** The additional law?

9           **THE COURT:** Their special jury instruction on the  
10 law.

11           **MR. LAFAYETTE:** We would go along with you,  
12 Your Honor.

13           **THE COURT:** You prefer to have no instruction --

14           **MR. LAFAYETTE:** Yes.

15           **THE COURT:** -- rather than dueling instructions --

16           **MR. LAFAYETTE:** Yes.

17           **THE COURT:** -- if that's the way to put it?

18           All right. Does either party have any objections to the  
19 Verdict Form?

20           **MR. LAFAYETTE:** Oh, there's one other item,  
21 Your Honor.

22           **THE COURT:** What is the one other item?

23           **MR. LAFAYETTE:** In our pretrial conference we  
24 referenced a stipulation that the -- that was executed on  
25 February 3rd. And your Order stated that this shall be read to

1 the jury. I can give you a copy of it.

2 **THE COURT:** I'm sure if you've got --

3 (Whereupon a document was tendered to the Court.)

4 **THE COURT:** Thank you. All right. And is your  
5 proposal that I read the first two paragraphs of this  
6 stipulation?

7 **MR. LAFAYETTE:** I think that I would probably be  
8 happier if you read lines 23 through 26. I don't think the  
9 second paragraph -- I think it's more procedural than  
10 stipulation.

11 **MR. SIEGEL:** Can someone state what the proposal is?  
12 I don't have it.

13 **MR. LAFAYETTE:** Oh, here. I can show you mine.

14 **MR. SIEGEL:** Thanks.

15 **THE COURT:** This is about the plaintiff's alleged  
16 emotional distress. And it says this stipulation may be read  
17 to the jury. I don't think it would make sense to read the  
18 entire document to the jury.

19 **MR. LAFAYETTE:** No. Just that (indicating).

20 **MR. SIEGEL:** Well, I guess if I agreed, I can't  
21 object; can I?

22 **THE COURT:** Well, you can object. It says the  
23 stipulation -- you can't object to the fact of stipulation; but  
24 which parts we read to the jury -- it's not spelled out here.

25 So the one other part that I think maybe we should tell



1 the jurors: The stipulation says Plaintiff may also testify as  
2 to her own damages. We don't want them to infer from this that  
3 they should disregard what she said about her own damages, or  
4 that this is the only document they should consider as to  
5 emotional distress.

6 **MR. LAFAYETTE:** At the last sentence on paragraph 2.

7 **THE COURT:** Yes.

8 **MR. LAFAYETTE:** Yes, Your Honor. That's fine.

9 **THE COURT:** So here's what I would read. "The  
10 Plaintiff agrees that she is not making a claim for mental and  
11 emotional distress over and above that usually associated with  
12 the alleged treatment of Plaintiff at issue in this case."

13 That sounds awfully legal.

14 "And Plaintiff may also testify as to her own damages."

15 In case the jurors have a question, what does "over and  
16 above that usually associated with the alleged treatment of  
17 Plaintiff at issue in this case" mean?

18 **MR. SIEGEL:** It means she's not making a claim for  
19 psychiatric harm.

20 **THE COURT:** Maybe we should say that.

21 **MR. SIEGEL:** That would be fine with me.

22 **MR. LAFAYETTE:** That's fine.

23 **MR. SIEGEL:** Merely making a claim for emotional  
24 distress.

25 **THE COURT:** Yeah. What if we said, "Plaintiff agrees

1 that she's not making any claim for psychiatric harm"?

2 **MR. SIEGEL:** That's fine.

3 **THE COURT:** Just leave it at that?

4 **MR. SIEGEL:** That's fine. You'll put it in the  
5 instruction on emotional distress?

6 **THE COURT:** Well, let's think about how we're -- what  
7 we're going to say in the instruction. First, there was just a  
8 factual stipulation to read to the jury during the evidence.

9 How about this sentence instead? "Ms. Preston agrees that  
10 she is not seeking damages for psychiatric harm, but is seeking  
11 damages for mental and emotional distress."

12 I used the term "damages" rather than "claim," so there's  
13 not some confusion about that being a cause of action.

14 **MR. LAFAYETTE:** That's fine, Your Honor.

15 **MR. SIEGEL:** That's fine.

16 **THE COURT:** Then I could give that same instruction  
17 on page 10 in the paragraph of noneconomic damage, emotional  
18 distress?

19 **MR. SIEGEL:** Yes.

20 **MR. LAFAYETTE:** Yes, Your Honor.

21 **THE COURT:** All right. So I will read that  
22 stipulation of fact to the parties at the close of the  
23 defendants' case. And I'll also insert it into the instruction  
24 on page 10.

25 There is a pattern instruction for stipulations. I don't

1 think we need to do an additional instruction. I'm just going  
2 to put it in there. It's the only one, so I'm just going to  
3 put it in there. Is that okay, with everyone's agreement?

4 **MR. LAFAYETTE:** Yes, Your Honor.

5 **THE COURT:** All right. Now the Verdict Form. Any  
6 Defense objection to the Verdict Form?

7 **MR. LAFAYETTE:** No objection.

8 **THE COURT:** Any Plaintiff objection to the Verdict  
9 Form?

10 **MR. SIEGEL:** No, Your Honor.

11 **THE COURT:** All right. I'm going to take it under  
12 submission and do a little editing to these documents. It will  
13 be in final form. I'll come back and tell you in about ten  
14 minutes before our -- confirm that our jurors are here. And  
15 we'll get ready to go. Time line.

16 Thank you very much. We're in recess.

17 **MR. SIEGEL:** I have one other matter Your Honor.

18 **THE COURT:** One other matter. Yes. Go ahead.

19 **MR. SIEGEL:** I would like to move to strike the  
20 testimony of Sonia Lara regarding the conversation she says she  
21 heard between the plaintiff and Dwight McElroy, on the grounds  
22 that to the extent to which that information was provided to a  
23 decision maker in this case, it was provided only after  
24 Ms. Preston's termination. And since the Court is not  
25 instructing on after-acquired evidence, I think that testimony

1 should be excluded.

2 And in addition, no further testimony should be allowed  
3 from Ms. Lara regarding events that she reported to Ms. Santana  
4 after Ms. Preston was fired.

5 **THE COURT:** So refresh my memory, if you will, as to  
6 what the testimony was on Friday by Ms. Lara about -- that  
7 you're trying to strike.

8 **MR. SIEGEL:** That she was in Ms. Preston's office;  
9 and Ms. Preston was on the telephone with Dwight McElroy, and  
10 urged him to file the grievance -- quote, unquote. The ATPT  
11 grievance. Part-time employees' grievance.

12 **THE COURT:** And what was the testimony as to when  
13 that conversation was?

14 **MR. SIEGEL:** There was no testimony as to when it  
15 was, but I know from other testimony that this witness has  
16 given that she reported it to Ms. Kasaine and Ms. Santana after  
17 Ms. Preston was fired.

18 **THE COURT:** And not before?

19 **MR. SIEGEL:** And not before. And I think --

20 **THE COURT:** All right.

21 **MR. SIEGEL:** There's probably no disagreement about  
22 that fact.

23 **MR. LAFAYETTE:** It's offered for impeachment.  
24 Counsel asked --

25 **THE COURT:** You're impeaching who?

1           **MR. LAFAYETTE:** Mr. McElroy and Ms. Preston. They  
2 were both asked in this trial if those events took place. This  
3 is a witness who comes back and says that they were lying when  
4 they said that in this courtroom. And impeachment testimony is  
5 always appropriate testimony. Particularly it would go to  
6 truth and veracity.

7           **MR. SIEGEL:** The point is that we have had an  
8 argument about after-acquired evidence for quite some time.  
9 And the -- the issue, I think, will confuse the jury if it's  
10 not clear that these are matters that were not disclosed until  
11 after the termination, and therefore cannot be considered in  
12 terms of determining the validity or good reasons for the  
13 termination.

14           **THE COURT:** All right. So I think it might be a  
15 situation where, if there is more testimony on this topic, that  
16 a limiting instruction should be given to direct the jury the  
17 purpose of it, so I'd consider that.

18           I think cross-examination can also clarify -- will give  
19 Ms. Preston an opportunity to clarify the sequence of events,  
20 because I don't believe from Friday's testimony it was clear  
21 the timing of when this conversation occurred; when it was  
22 reported; who it was reported to. That might be further  
23 clarified with Defense questioning.

24           And while I will overrule the objection to the extent that  
25 you're seeking to strike testimony from Friday, I'm also not

1 going to allow lengthier examination of other events that  
2 occurred later -- other so-called "after-acquired evidence" --  
3 because there would be a danger of confusion to the jury if  
4 they were thinking that that was a basis for the termination,  
5 when -- if the record evidence is that that was not the basis.

6 **MR. LAFAYETTE:** But, Your Honor, my only objection is  
7 this. If they were allowed to come in this courtroom and say  
8 that they didn't do these things, then I'm allowed to impeach  
9 them with the testimony of someone who was there.

10 **THE COURT:** And you have. And you have.

11 **MR. LAFAYETTE:** That's the only thing I'm saying.

12 **THE COURT:** But the purpose of impeachment and the  
13 rules of impeachment are not unlimited all apart. It's -- you  
14 make your point. And it has to be proportional to the other  
15 parts of the case. Otherwise, the jury can be confused that  
16 it's about the impeachment, rather than about the reason she  
17 was fired, and whether there was retaliation or not.

18 So you've already gotten testimony about it. And I'll  
19 allow you to, if you need to, clarify the timing.

20 **MR. LAFAYETTE:** I'll do that.

21 **THE COURT:** But if I'm hearing more questions and  
22 answers about things that happened later, and Ms. Lara's  
23 already been on the stand for a while, longer than she was  
24 anticipated in the beginning, I will start to end the  
25 testimony.

1           **MR. LAFAYETTE:** Thank you, Your Honor.

2           **THE COURT:** So that's my ruling there.

3           All right. Back in ten minutes. Thank you.

4           (Discussion off the record.)

5           **THE COURT:** Let's go back on the record, so there's  
6 actually a record of what you're saying. Yes. Go ahead.

7           **MR. SIEGEL:** So the case I was --

8           **THE COURT:** This is Mr. Siegel speaking. Go ahead.

9           **MR. SIEGEL:** -- trying to cite to you -- it turns  
10 out it's a Ninth Circuit case. It's called *Reynolds versus*  
11 *City and County of San Francisco*. 576 -- what is it?

12           **MS. MEHTA:** 576 F. App. 698.

13           And there's also *Satyadi*, a case from 2014. 232 Cal. App.  
14 4th --

15           **THE COURT:** When you said the number was 232 --

16           **MS. MEHTA:** Yes. 232 Cal. App. 4th, 1022.

17           **THE COURT:** And you think those cases stand for the  
18 proposition that --

19           **MS. MEHTA:** -- that the amendments merely clarify the  
20 law, and therefore, of course, 11025 never intended for the  
21 juries to consider job duties, at all.

22           **THE COURT:** Great. Back in ten minutes. Thank you.  
23 (Recess taken from 9:44 a.m. until 9:57 a.m.)

24           **THE COURT:** Back on the record. The jurors are not  
25 present. We still are absent one juror who it looks like is

1 going to be a little bit late. So we're going to have a little  
2 bit more time for you to get the exhibits clarified, and be  
3 ready for when the jury's ready.

4 So the sentence I've added in the closing instruction on  
5 page 10 in the section on noneconomic damage emotional distress  
6 is, "Preston is seeking noneconomic damages for mental  
7 emotional distress, but she is not seeking damages for  
8 psychiatric harm," period. Then, going on to the language  
9 previously drafted of, "No fixed standard exists for deciding  
10 whether or not these noneconomic damages" -- and so forth. So  
11 that's the one sentence out of there.

12 On page 12 -- excuse me. Page 8. The discussion at page  
13 8, lines 14 and 15, the sentence in discussion being the last  
14 one of that section, "A disclosure is protected, even though  
15 disclosing the information may be part of Preston's job  
16 duties."

17 I did look at the authorities cited by plaintiff's  
18 counsel: The *Reynolds* case, and *Satyadi versus West*  
19 *Contra Costa*. And I agree with the reasoning in the *Reynolds*  
20 Decision that the change in the law was a clarification of  
21 existing legislative decision, rather than a change in the law.  
22 Therefore, I'm keeping in the sentence in the closing  
23 instruction as being a proper one. So I will be giving that  
24 sentence, and overrule the Defense objection to it.

25 So that resolves the remaining Jury Instruction issues.



1 We will print those out and make copies for you. And, of  
2 course, copies will be provided to the jurors, as well.

3 So we'll be in recess until our jurors are ready. And  
4 then Ms. Lara will be returning to the stand. Thank you.

5 **MR. LAFAYETTE:** Thank you, Your Honor.

6 (Recess taken from 9:59 a.m. until 10:18 a.m.)

7 **THE COURT:** All right. We're ready to go. Please  
8 bring in the jurors. The Defense may call in Ms. Lara so we  
9 can get her ready, too.

10 (Proceedings were heard in the presence of the jury:)

11 **THE COURT:** Welcome back to our jurors. We return to  
12 trial.

13 Ms. Lara, if you can come on forward and take the stand  
14 we'll continue our examination, and after that, the remainder  
15 of the Defense case. And, Ms. Lara, you remain under oath.

16 **THE WITNESS:** Okay.

17 **SONIA LARA,**  
18 called as a witness for the Defendants, having been previously  
19 duly sworn, testified further as follows:

20 **DIRECT EXAMINATION** (resumed)

21 **BY MR. LAFAYETTE**

22 **Q.** Good morning, Ms. Lara.

23 **A.** Good morning.

24 **Q.** I'd like to pick up kind of where we dropped off. We had  
25 been discussing the August 6th, 2013, meeting. Do you remember

1 that?

2 A. Yes.

3 Q. And at some point in time, I think you said that  
4 Ms. Katano explained what she had been doing with the payroll.  
5 Do you remember that?

6 A. Yes.

7 Q. And she had indicated that she had been collecting dues  
8 based on a report from payroll?

9 A. Correct.

10 MR. SIEGEL: Objection. Leading.

11 THE COURT: Sustained.

12 And the jury was paying attention on Friday, so let's move  
13 ahead with new questions.

14 BY MR. LAFAYETTE

15 Q. Did you think there was anything wrong in what she had  
16 been doing?

17 A. No.

18 MR. SIEGEL: Objection. Foundation.

19 THE COURT: Sustained.

20 The jury will disregard the last answer.

21 BY MR. LAFAYETTE

22 Q. You are a person in the Labor Relations Department?

23 A. Yes.

24 Q. You have experience with working with memorandums of  
25 understanding?

1 A. Yes.

2 Q. Did you believe that, based upon your experience with  
3 these memorandums of understanding, and particularly this  
4 particular Memorandum of Understanding, that Ms. Katano Kasaine  
5 was doing something wrong?

6 A. No.

7 Q. Did you think there was any need to conduct an  
8 investigation of Ms. Katano [sic]?

9 A. No.

10 Q. Now, at some point in time did you overhear a conversation  
11 between Ms. Preston and Ms. Santana regarding the assignment of  
12 an investigation?

13 A. Yes.

14 Q. Was this -- were you -- was the conversation by phone?

15 A. Yes, it was by phone.

16 Q. And were you on the call or were you in the room with  
17 someone?

18 A. I was in the room with Ms. Preston.

19 Q. In a room with Ms. Preston. And Ms. Santana was on the  
20 phone?

21 A. Ms. Santana was on the phone.

22 MR. SIEGEL: Objection. Foundation.

23 THE COURT: Sustained.

24 You can ask further foundational questions about how she  
25 knows Ms. Santana.

1 BY MR. LAFAYETTE

2 Q. How do you know Ms. Santana?

3 A. Ms. Preston called her, put her on speaker phone, and I  
4 heard Ms. Santana's voice.

5 Q. Did you announce yourself in the room?

6 A. No. Ms. Preston basically, with her finger, said to me  
7 *Don't say your name*; like (indicating) *Shut up*, I guess.

8 Q. And in that conversation, did Ms. Preston raise her voice?

9 A. She raised her voice.

10 Q. Now, did you witness Ms. Santana advising Ms. Preston  
11 advising the union how to negotiate against the City?

12 A. Yes.

13 Q. And can you tell me what you observed?

14 A. It was one day that we were bargaining. I was in her  
15 office -- Ms. Preston's office. Dwight McElroy comes in. I  
16 wanted to leave. She said, "No. You could stay."

17 He then looks at me and tells Ms. Preston, "Is she okay?"

18 Ms. Preston says, "Yeah. She's okay."

19 I sit down. And I figured in my head, "Oh, my God.

20 What's going to happen?"

21 Ms. Preston pulls out a piece of paper, and throws --  
22 basically tosses it in front of him, and says, "This is how you  
23 have to counter to us."

24 He's reading. He then says, "Okay." He wants to take it.

25 She says "No."

1 He then says, "Come on. You're going to make a brother  
2 use his pen and paper to write this down?"

3 She then takes it away, grabs a pair of scissors, cuts the  
4 top, cuts the bottom, and says, "Here" (indicating).

5 Q. What was on the top and the bottom?

6 A. In the top it had to be the City of Oakland TA or  
7 something to that effect. It had to be some kind of a header  
8 that stated the City of Oakland.

9 And at the bottom are signatures.

10 Q. I would ask you to take a look at something in front of  
11 you there which is referred to as "Exhibit 4P."

12 A. Okay.

13 Q. Do you recognize Exhibit 4P?

14 A. Yes.

15 Q. Did you sign it?

16 A. I signed it, and I typed it.

17 (Document displayed.)

18 **BY MR. LAFAYETTE**

19 Q. You signed it and you typed it.

20 Does Exhibit 4P in any way whatsoever relate to the issues  
21 raised by the collection of dues for TPTs?

22 A. Yes.

23 Q. Does it impact the discussions that you had on August 6,  
24 2013?

25 A. Yes.

1 Q. Can you please explain how?

2 A. In the August 6th meeting we had discussed with the union  
3 of why it was that we weren't deducting dues from every single  
4 person on the list, which was, again, because not everybody's  
5 active.

6 Two. They could have had multiple assignments.

7 And, three, they weren't making enough money.

8 We had asked the union at that time if there is someone  
9 that we are missing that you know, let us know. They never  
10 did.

11 This now basically says nothing in this section shall  
12 relieve the City of its obligations to deduct dues, which means  
13 that we would automatically have to pull them out.

14 Q. You would automatically have to do what?

15 A. Pull the dues out from the employee.

16 Q. Even if the union had not given you notice?

17 A. Correct.

18 Q. This document is dated October 2, 2013. This one has a  
19 number 26 on it.

20 A. Mm-hm.

21 Q. Was this document in the office of the labor director  
22 after she was terminated?

23 A. No.

24 Q. To your knowledge, was this document only in the  
25 possession of the union?

1           **MR. SIEGEL:** Objection. Foundation.

2           **THE COURT:** Sustained.

3 **BY MR. LAFAYETTE**

4 **Q.** Now, did you ever receive anything or see anything that  
5 indicated that the City Council had approved this Tentative  
6 Agreement?

7 **A.** No.

8 **Q.** Did you ever see anything that indicated that the City  
9 Administrator had approved this Tentative Agreement?

10 **A.** No.

11 **Q.** To your knowledge, was anyone in the City aware that this  
12 Tentative Agreement had been entered into, other than you and  
13 Ms. Preston?

14           **MR. SIEGEL:** Objection. Foundation, Your Honor.

15           **THE COURT:** Sustained.

16 **BY MR. LAFAYETTE**

17 **Q.** Were you surprised that Ms. Preston was terminated?

18 **A.** Yes.

19           **MR. SIEGEL:** Objection. Relevance.

20           **THE COURT:** Sustained.

21 **BY MR. LAFAYETTE**

22 **Q.** I want to talk to you about something about a terabyte.

23 **A.** Hm.

24 **Q.** Okay? Did you witness Ms. Preston pay Ms. Everett for the  
25 terabyte?

1 A. Yes.

2 Q. Did Ms. Preston say something regarding how she was going  
3 to use the terabyte?

4 A. Yes.

5 Q. What did she say?

6 A. Can I tell a little bit how it happened?

7 Q. Go ahead.

8 MR. SIEGEL: Objection. Not responsive.

9 THE COURT: Overruled.

10 THE WITNESS: So I could --

11 THE COURT: You may answer.

12 THE WITNESS: Okay. So I came into the office where  
13 Ms. Preston was. And T.C. Everett was next to Ms. Preston and  
14 her computer. I would come into Ms. Preston's office, as she  
15 was my supervisor. I noticed that they were there. And I  
16 said, "Oh, sorry." And I was going to go back out.

17 She said, "No, no. Come in." She's like, "T.C. bought me  
18 a terabyte." They were exchanging money and receipts. And  
19 says, "And she's downloading everything from my computer."

20 BY MR. LAFAYETTE

21 Q. Approximately when was it that this occurred?

22 A. Oh, in the summer. Maybe July, August. I can't recall  
23 the exact date.

24 MR. LAFAYETTE: I have no further questions of this  
25 witness, Your Honor.



1           **THE COURT:** Thank you.

2           Mr. Siegel.

3           **MR. SIEGEL:** Thank you.

4                           **CROSS-EXAMINATION**

5 **BY MR. SIEGEL**

6 **Q.** Good morning, Ms. Lara.

7 **A.** Good morning.

8 **Q.** So you always seem to be at the right place at the right  
9 time.

10           **MR. LAFAYETTE:** Objection. It's argumentative,  
11 Your Honor.

12           **MR. SIEGEL:** I haven't finished my question.

13           **THE COURT:** Let's ask a question.

14           **MR. SIEGEL:** Huh?

15           **THE COURT:** Let's ask a question.

16           **MR. SIEGEL:** Okay.

17 **Q.** So you were always at the right place at the right time;  
18 weren't you, Ms. Lara?

19           **MR. LAFAYETTE:** Objection. It's argumentative.

20           **THE COURT:** Overruled.

21           **THE WITNESS:** I guess.

22           **MR. SIEGEL:** I guess. Right.

23 **Q.** So let me ask you a question. You said earlier that  
24 whenever you had a new boss you always said, "Don't ask me to  
25 lie. Don't ask me to destroy documents," and treat you with

1 respect. Is that right?

2 **A.** Correct.

3 **Q.** And did you say the same thing to the attorneys for the  
4 City when they prepared you for your testimony in this case?

5 **MR. LAFAYETTE:** Objection. Attorney-client  
6 privilege, Your Honor, and relevancy.

7 **THE COURT:** Relevancy is sustained.

8 **MR. SIEGEL:** Okay.

9 **Q.** Can you please explain to the jury what you've done to  
10 prepare your testimony in this case?

11 **A.** What I've done to prepare it?

12 **MR. SIEGEL:** Yeah.

13 **THE WITNESS:** Nothing.

14 **MR. LAFAYETTE:** Objection. Relevancy.

15 **THE COURT:** Overruled.

16 **MR. SIEGEL:** Nothing?

17 **THE WITNESS:** Nothing.

18 **BY MR. SIEGEL**

19 **Q.** You didn't meet with any of the attorneys?

20 **A.** I met with them. They were asking me what happened.

21 **Q.** When did you meet with them?

22 **A.** Maybe -- I met with -- I met with Sonia on --

23 **Q.** Let me turn to --

24 **A.** -- doing the depositions.

25 **MR. LAFAYETTE:** Objection. He's cutting her off,

1 Your Honor.

2 **THE COURT:** Sustained.

3 Let's have question and answer.

4 **BY MR. SIEGEL**

5 **Q.** When did you meet with the attorneys for the City?

6 **A.** I met with them maybe during the summer.

7 **Q.** The summer of which year?

8 **A.** Of this year.

9 **Q.** And who was present?

10 **A.** Of the City? Of the attorneys? Otis McGee.

11 **Q.** Anyone else?

12 **A.** That was it.

13 **Q.** Never met with Mr. Lafayette?

14 **A.** No. I don't even know who Mr. Lafayette is.

15 **Q.** He's the person who was just questioning you.

16 **A.** Oh, Gary. Sorry. I didn't know him by last name. I knew  
17 him by first name. Sorry.

18 **Q.** I see.

19 **A.** I met him maybe -- let's see -- September. It could have  
20 been August. Maybe August of this year.

21 **Q.** Okay. And did you also meet with the attorneys for the  
22 previous firm -- Meyers Nave -- that was in the case?

23 **MR. LAFAYETTE:** Objection. Relevancy, Your Honor.

24 **THE COURT:** Overruled.

25 **THE WITNESS:** No.

1 BY MR. SIEGEL

2 Q. Didn't they take a statement from you, where you were  
3 sworn to tell the truth?

4 A. No.

5 Q. Okay. And let me just ask you a few questions about  
6 what's occurred here in this case. You were sorry when  
7 Ms. Preston was terminated. Correct?

8 A. Yes.

9 Q. And she had helped you advance your career in the City of  
10 Oakland. Correct?

11 A. She had recruited me from HR --

12 Q. Okay.

13 A. -- but I'd done Employee Relations before.

14 Q. Okay. And helped you get a pay raise. Correct?

15 A. Yeah, she did.

16 Q. And when she was terminated on that date, did you meet  
17 with Katano Kasaine?

18 A. Yes.

19 Q. And did she come to your office and tell you that she was  
20 now in charge of ER?

21 A. Yes.

22 Q. And did she then take you to meet Ms. Santana?

23 A. Yes.

24 Q. And Winnie Anderson was there, as well?

25 A. Correct.

1 Q. And you then told Ms. Santana the things that you said in  
2 court today and last Friday. Correct?

3 MR. LAFAYETTE: Objection. It's overbroad.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: There was an attorney there from the  
7 City Attorney's Office. Do I still answer, even though it's  
8 attorney-client privileged?

9 THE COURT: Yes.

10 THE WITNESS: Okay. Can you repeat the question?

11 BY MR. SIEGEL

12 Q. Sure. Did you tell Ms. Santana the things that you've  
13 testified in court today and last Friday?

14 A. Yes, I did.

15 Q. And who was present from the City Attorney's Office?

16 A. Barbara Parker.

17 Q. Okay. Oh. So the City Attorney was there?

18 A. The City Attorney.

19 Q. Okay. And let's go through some of those things. With  
20 respect to the investigation of Deb Grant, you wrote a  
21 statement that Andrea Gourdine asked you to write. Correct?

22 A. Correct.

23 Q. And by the time you wrote that statement, you were no  
24 longer working for Andrea Gourdine. Correct?

25 A. Correct.

1 Q. You were now working in Employee Relations?

2 A. Correct.

3 Q. And you understood -- did you not? -- that one of the  
4 responsibilities of Employee Relations was to carry out  
5 investigations of other employees who were accused of some sort  
6 of misconduct?

7 A. Yes. I --

8 Q. In fact --

9 A. However, Ms. Gourdine had asked me to write the statement  
10 before I left Ms. Gourdine. And, with the transition, I didn't  
11 do it.

12 Q. Okay. But back to my question.

13 A. Yes.

14 Q. You understood when you went to Employee Relations that it  
15 was responsible for conducting investigations of employees  
16 accused of misconduct?

17 A. Correct.

18 Q. And that, in fact, that had been something that  
19 LaWanna Preston had been in charge of, even during the time  
20 when she was within the Human Resources Division under  
21 Ms. Gourdine. Correct?

22 A. Correct.

23 Q. Okay. And you understood that was one of the main  
24 responsibilities?

25 A. It was one ever the main. Yes.

1 Q. And that once you became part of Employee Relations, you  
2 would be doing investigations. Correct?

3 A. Correct.

4 Q. And you understood -- or did you understand that it would  
5 be a conflict of interest to both be a witness in a case, and  
6 to do an investigation of the case at the same time?

7 A. Yes. And that's why I wouldn't be doing the  
8 investigation. I was going to -- if I was the witness, I was  
9 the witness.

10 Q. Whose call would that be whether --

11 A. That would have been Ms. Preston.

12 Q. That's right.

13 A. Mm-hm.

14 Q. And at the time that this incident with the statement  
15 occurred, you and Ms. Preston were the only people in Employee  
16 Relations who were doing investigations. Correct?

17 A. During that time -- ah, no. I want to say  
18 Trinette Gist-Skinner was still there during that time.

19 Q. When did Ms. Trinette [sic] get transferred to the Fire  
20 Department?

21 A. In June of 2013.

22 Q. Okay. And was Ian Appleyard part of the staff at that  
23 time?

24 A. Yes, he was.

25 Q. And he was out during the period when this Deb Grant

1 investigation took place?

2 **A.** Yes.

3 **Q.** Okay. And now let me ask you: What was it that was in  
4 your statement about Deb Grant?

5 **A.** The statement contained -- that -- how I purchased --  
6 because I was the one that purchased some computers.

7 **Q.** Okay.

8 **A.** She wanted -- she called it, "I want a Maserati for me;  
9 and I want a" -- I can't remember the other name of the car  
10 that she wanted for her second person. And then she wanted me  
11 to purchase computers for the rest of her staff.

12 **Q.** Okay.

13 **A.** So IT -- when they got the computers, they weren't  
14 compatible to what she needed from her softwares. And they  
15 return it back to me. So we did that. That was part of the  
16 statement.

17 The other thing that was part of the statement was that  
18 Ms. Grant was getting temporary people through a third-party  
19 vendor. And the third-party vendor was a Workers' Comp vendor.  
20 And that's not the way of getting temps for the City of  
21 Oakland.

22 **Q.** Okay. Now, all of the of the facts that were in your  
23 statement were facts that could be ascertained from looking at  
24 City records. Correct?

25 **A.** Correct.



1 Q. Okay. And so your statement really wasn't necessary to  
2 investigate whatever it was that Ms. Grant was accused of  
3 doing?

4 MR. LAFAYETTE: Objection. Lacking foundation.  
5 Requires speculation.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 BY MR. SIEGEL

9 Q. Okay. And by the way, you had prepared this statement on  
10 your computer. Correct?

11 A. Yes.

12 Q. So even though Ms. Preston took a copy away -- that is,  
13 the copy you had left on the copy machine -- you went back to  
14 your computer and printed out another one. Correct?

15 A. After I got the directive --

16 Q. Right?

17 A. -- from Scott Johnson, yes.

18 Q. Okay. So she didn't really ruin the evidence. Correct?  
19 The evidence was there on your computer?

20 A. Correct.

21 Q. Okay. And then were you part of the process where the  
22 Internal Affairs Division of the Police Department investigated  
23 Deb Grant and Ms. Preston?

24 A. Yes.

25 Q. Okay. And were you around when they completed their

1 investigation?

2 **A.** Yeah. I'm still with the City, so I guess I'm still  
3 around.

4 **Q.** And did you discuss the conclusion of that investigation  
5 with Ms. Santana?

6 **MR. LAFAYETTE:** Lacking foundation.

7 **THE COURT:** Overruled.

8 You may answer.

9 **THE WITNESS:** No.

10 **BY MR. SIEGEL**

11 **Q.** Okay. Now, you say you just happened to be present when  
12 there was a conversation between Ms. Preston and T.C. Everett.  
13 Correct?

14 **A.** Correct.

15 **Q.** And Ms. Preston -- was this in Ms. Preston's office?

16 **A.** Yes.

17 **Q.** Okay. And that was one of those meetings where you wanted  
18 to leave, but Ms. Preston asked you to stay there?

19 **A.** Yes.

20 **Q.** And -- and you saw Ms. Preston buy what from Ms. Everett?

21 **A.** A terabyte. So a device where you save files, pictures,  
22 videos, whatever you want to save, that gets connected to your  
23 computer.

24 **Q.** In other words --

25 **A.** A flash drive.

1 Q. A flash drive.

2 A. But it's a terabyte?

3 Q. Terabyte?

4 A. Sorry.

5 Q. Which refers to the capacity of the device?

6 A. Correct.

7 Q. So it could hold more information?

8 A. Correct.

9 Q. Okay. And were you also present when Ms. Preston advised  
10 Ms. Everett that her computer wasn't working?

11 A. No.

12 Q. You just weren't part of those meetings?

13 A. No.

14 Q. Were you present when Ms. Everett was explaining to  
15 Ms. Preston that if they didn't transfer the data, then it  
16 might be lost from Ms. Preston's computer?

17 A. Nope.

18 Q. Oh. Did you happen to be there when Ms. Santana ordered  
19 that Ms. Preston's e-mail be reviewed and accessed?

20 A. No.

21 Q. You weren't part of that meeting. I see. Okay.

22 MR. LAFAYETTE: Objection. Argumentative. Assumes  
23 facts not in evidence.

24 THE COURT: Sustained.

25

1 BY MR. SIEGEL

2 Q. Now, have you received a promotion in the last period of  
3 time?

4 MR. LAFAYETTE: Objection. Relevancy.

5 THE COURT: Overruled.

6 THE WITNESS: In what period of time?

7 BY MR. SIEGEL

8 Q. Since Ms. Preston's termination.

9 A. Yes. I became appointed to the position.

10 Q. What's that mean?

11 A. When Ms. Preston was -- when I was with Ms. Preston, I was  
12 an exempt limited duration temporary position.

13 After Ms. Preston left, Katano and Ms. Santana made me --  
14 they appointed me into the permanent position.

15 Q. And you hold that now?

16 A. Yes.

17 Q. You said you were present in a meeting or -- excuse me --  
18 during the telephone conversation where Ms. Santana was on the  
19 telephone, and you were in Ms. Preston's office?

20 A. Yes.

21 Q. What was the date of that meeting?

22 A. I don't recall the date, but it was approximately maybe in  
23 July or August. Actually, it had to be -- it had to be in  
24 September, now that I'm thinking about it.

25 Q. Why did it have to be in September?

1 A. Because of what Ms. Preston was asking Ms. Santana.

2 Q. I see. And what was she asking Ms. Santana?

3 A. She was asking her to let Katano know to respond to her,  
4 because she needed to do an administrative investigation on  
5 Katano Kasaine.

6 Q. So that gets back to that meeting on August 6th. Right?

7 A. Yes.

8 Q. Okay. And so -- but let me ask you this. You're saying  
9 Ms. Preston didn't tell Ms. Santana that she was on a speaker  
10 phone?

11 A. Correct.

12 Q. Who initiated that phone call?

13 A. If I recall, it was Ms. Preston.

14 Q. Okay. And what do you recall that Ms. Santana said over  
15 that speaker-phone conversation?

16 A. It seemed like she couldn't speak. The conversation was  
17 quick; but Ms. Santana said, "LaWanna, I will have the  
18 City Attorney take care of this investigation."

19 Q. Oh. She didn't say, "I'm going to have a third party take  
20 care of the investigation?"

21 A. I couldn't recall that. What I remembered was  
22 City Attorney.

23 Q. Okay. Now let's talk a little bit about that August 6th  
24 meeting. You -- you were present. Is that right?

25 A. Correct.

1 Q. And you heard Ms. Kasaine say that she was not collecting  
2 union dues from all part-time employees. Is that right?

3 A. Not from all. From some.

4 Q. Okay. And by the way, you've testified about that. Isn't  
5 it true that when the City of Oakland has an agreement with a  
6 bargaining unit, and the provision of the bargaining unit  
7 requires the collection of dues, those dues get collected  
8 whether the employee agrees or not?

9 MR. LAFAYETTE: Objection. Calls for conclusion.  
10 Lacking in foundation.

11 MR. SIEGEL: Well, Your Honor, she's testified.

12 THE COURT: Overruled. Overruled. You asked the  
13 same type of question.

14 You may answer.

15 THE WITNESS: Okay. Yes, but we were deducting some  
16 of the -- the City was deducting.

17 BY MR. SIEGEL

18 Q. Okay, but my point is --

19 A. Mm-hm.

20 Q. -- it was not necessary for the employee to agree.  
21 Correct?

22 A. Correct.

23 Q. The contract says collect the dues. The City's supposed  
24 to collect the dues.

25 A. Correct.

1 Q. Okay. And if the employee wants to be a full union  
2 member, then the full dues are collected. Correct?

3 A. Correct.

4 Q. And if the employee simply wants to be an agency fee  
5 payer, that's what happens?

6 A. Yes.

7 Q. And if the plea doesn't sign anything, then the City  
8 deducts the agency fees. Is that right?

9 A. If there are funds. Yes.

10 Q. Okay. Now, isn't it true that when you heard Ms. Kasaine  
11 make these comments at the August 6th, 2013, meeting, you were  
12 concerned about her comments?

13 A. Yes.

14 Q. And you thought she said something that she should not  
15 have said?

16 A. And that's why we called a caucus.

17 Q. Okay.

18 A. We stepped out of the room.

19 Q. And that's because she said something that she should not  
20 have said?

21 A. Correct.

22 Q. And what she said that she should not have said is that,  
23 "I haven't been collecting these dues"?

24 A. Correct.

25 Q. Okay. And then you and Ms. Anderson met with her?

1 A. Correct.

2 Q. And she went back into the room, and she made the same  
3 statement. Correct?

4 A. She corrected her statement.

5 Q. How did she correct it?

6 A. She corrected by explaining to them that the reason why  
7 she wasn't collecting was for the people that -- one, that are  
8 only active in the books, but not getting a paycheck; two,  
9 they're making -- they're not making enough money, and she's  
10 not collecting from every single assignment that they have,  
11 because they had multiple assignments. There were people that  
12 had three, or four, or two assignments.

13 Q. And she also said -- didn't she? -- that if she collected  
14 dues from all of the employees, her phone would be ringing off  
15 the hook?

16 A. Yes.

17 Q. She did say that. Right?

18 A. She did say that.

19 Q. Okay. So she denies saying that when she testified in  
20 court last week. That would be an error on her part. Correct?

21 **MR. LAFAYETTE:** Objection. Argumentative.

22 **THE COURT:** Sustained.

23 And the jury will remember that the attorneys are not  
24 witnesses. And your memory of what other witnesses said will  
25 control; not what the attorneys are arguing during court.



1 BY MR. SIEGEL

2 Q. Now, you participated in that negotiation on August 2,  
3 2013. Correct?

4 A. August 2?

5 Q. Excuse me. October 2.

6 A. Yes, I did.

7 Q. When the TA was signed?

8 A. Yes.

9 Q. What time did those negotiations begin?

10 A. They typically would begin --

11 Well, the City takes a little bit of time; but typically  
12 around maybe ten.

13 Q. Ten in the morning?

14 A. Ten in the morning. Mm-hm.

15 Q. And how long did those particular negotiations take place?

16 A. At least for that day, I would say that we went all the  
17 way until maybe five.

18 Q. Whole day?

19 A. Yeah, whole day. Caucus in between, but whole day.

20 Q. Were you with Ms. Preston the whole day?

21 A. Yes, I was.

22 Q. Do you recall her having a meeting with Ms. Santana that  
23 day?

24 A. I don't.

25 Q. Okay. Do you recall her having the telephone conversation

1 with Ms. Santana on October 2?

2 A. No, I don't.

3 Q. Okay. Now, as a labor-relations negotiator, have you been  
4 part of what are known as "sidebars" with union officials?

5 A. Yes, I have.

6 Q. Do you know what a sidebar is?

7 A. Yes.

8 Q. That's when someone from each side gets together away from  
9 the negotiating table?

10 A. Correct.

11 Q. Tries to figure out what to do?

12 A. Correct.

13 Q. It's fair to say that during these sidebars, there's some  
14 of what occurs that might be described as "horse-trading"?

15 A. Correct.

16 Q. Like, okay. Let's -- we go back. If I say this, if you  
17 say that, and maybe we'll reach a deal?

18 A. Yes. Absolutely.

19 Q. With respect to the issue of the Temporary Part Time  
20 employees --

21 A. Mm-hm.

22 Q. -- have you ever seen the grievance that SEIU filed in  
23 that case?

24 A. I did.

25 Q. Okay. That was a grievance against the City. Correct?

1 A. Correct.

2 Q. And it was a grievance against the City for not collecting  
3 union dues. Correct?

4 A. Correct.

5 Q. It's not a grievance against Ms. Kasaine personally; was  
6 it?

7 A. No.

8 Q. And Ms. Kasaine, therefore, as far as you're concerned,  
9 had nothing to worry about personally because of that  
10 grievance?

11 MR. LAFAYETTE: Objection. Requires speculation.

12 THE COURT: Overruled.

13 THE WITNESS: Correct. There was nothing for her to  
14 worry about because it's not about her.

15 MR. SIEGEL: Nothing to worry about.

16 In fact, have you been involved since then, in terms of  
17 trying to figure out this dues issue?

18 MR. LAFAYETTE: Objection. Relevancy as subsequent  
19 remedial.

20 THE COURT: Overruled as a foundational question.

21 THE WITNESS: Yes.

22 BY MR. SIEGEL

23 Q. Let me ask you this.

24 A. Mm-hm.

25 Q. Isn't it true that the way the City could find out who was

1 paying dues and who was not is simply by looking at payroll  
2 records?

3 **A.** Correct. Running reports.

4 **MR. SIEGEL:** Thank you. I have no further questions.

5 **THE COURT:** All right. Ladies and gentlemen of the  
6 jury, we're going to take a break now; an opportunity, if you  
7 wish to, to write down any questions. Again, you're not  
8 required to. We'll come back in ten minutes with those  
9 questions or further examination. Thank you very much.

10 **THE CLERK:** Please rise.

11 (Recess taken from 10:48 a.m. until 10:58 a.m.)

12 (Proceedings were heard outside the presence of the jury:)

13 **THE COURT:** Ms. Lara, you may come back to the stand.  
14 We have a few questions of a factual nature which I will ask  
15 the witness. Please bring our jurors back in.

16 (Proceedings were heard in the presence of the jury:)

17 **THE COURT:** All right. Our jurors have returned.  
18 Please be seated.

19 Ms. Lara, you remain under oath. We have a few questions  
20 from our jurors. I'll ask both of them, so you have the full  
21 context. The questions are: Are you now the Employee  
22 Relations Director; and did you apply for this position?

23 **THE WITNESS:** The answer is, no, I'm not the Employee  
24 Relations Director; and I did not apply for the position.

25 **THE COURT:** What is your current position?

1           **THE WITNESS:** I'm a Principal Employee Relations  
2 Analyst.

3           **THE COURT:** Any further examination from either party  
4 on that topic?

5           **MR. LAFAYETTE:** I have further examination, but I can  
6 just take that piece of examination. I'll do it.

7           **THE COURT:** Are there any further questions from  
8 Mr. Siegel?

9           **MR. SIEGEL:** No.

10           **THE COURT:** You have no more than two minutes  
11 remaining with this witness. You've already questioned for two  
12 days. Go ahead.

13                           **REDIRECT EXAMINATION**

14 **BY MR. LAFAYETTE**

15 **Q.** How far is your office from Ms. Preston's office -- was  
16 it?

17 **A.** Was it? It's about, I guess, three feet. Whatever the --

18 **Q.** How often were you in her office?

19 **A.** Oh, every day.

20 **Q.** And with regard to the meet -- October 2nd negotiations,  
21 were you with her every minute of the day?

22 **A.** Not every minute of the day. I mean, I'm pretty sure I  
23 went to the rest room. She probably took meetings, you know.

24 **Q.** And after Ms. Preston left, who was it that became the  
25 Interim Director?

1 A. Katano Kasaine.

2 Q. And what -- did -- was there a change in the status of  
3 Ms. Winnie Anderson at that time?

4 A. She became permanent, like I did. However, they made her  
5 the day-to-day supervisor.

6 MR. LAFAYETTE: No further questions, Your Honor.

7 THE COURT: Thank you.

8 MR. SIEGEL: If I may clarify that.

9 THE COURT: You may.

10 RECROSS-EXAMINATION

11 BY MR. SIEGEL

12 Q. So again, October 2nd was date where you negotiated that  
13 TA with the union. Correct?

14 A. Correct.

15 Q. On the dues?

16 Was it your role in, say, September 2013 to go to closed  
17 session and discuss labor agreements?

18 A. At that point is when we started going to closed session.

19 Q. When did you start to go?

20 A. I started in September. Actually, no. Sorry. Let me  
21 take that back. First is October. So it's November.

22 Q. You started in November?

23 A. In November, yes, going to closed sessions.

24 Q. So you don't know whether the October 2nd TA was approved  
25 by the Council in closed session before October 2?

1     **A.**    My understanding from Ms. Preston was that it was approved  
2     by Council.

3                 **MR. SIEGEL:**   It was approved.   Okay.   Great.   Thank  
4     you.

5                 **THE COURT:**   You may step down.   Thank you for being  
6     here on two days.

7                 **THE WITNESS:**   All right.  
8     (Witness excused.)

9                 **THE COURT:**   And the Defense would call its next  
10    witness, please.

11                **MR. LAFAYETTE:**   Yes, Your Honor.   The Defense calls  
12    Deanna Santana.

13                                 **DEANNA SANTANA,**  
14    called as a witness for the Defendant, having been duly sworn,  
15    testified as follows:

16                **THE WITNESS:**   I do.

17                **THE CLERK:**    You may be seated.

18                **THE COURT:**    We already know her name, so go ahead.

19                **MR. LAFAYETTE:**   Ms. Santana, go ahead.

20                                 **DIRECT EXAMINATION**

21    **BY MR. LAFAYETTE**

22    **Q.**    Did you terminate Ms. Preston's employment because she  
23    refused to add language to the Rainbow Teen Center Report  
24    referring to Desley Brooks for prosecution?

25                **JUROR RODRIGUEZ:**   (Indicating.)

1           **MS. MEHTA:** (Indicating.)

2           **THE COURT:** Sustained.

3           And, Mr. Lafayette, you need to speak into the microphone  
4 and have the witness, because the jury can't hear you, and the  
5 witness might not be able to hear you, either. So start your  
6 question again at a louder volume.

7           **MR. LAFAYETTE:** Thank you, Your Honor.

8 **Q.** Did you terminate his Preston's employment because she  
9 refused to confirm a statement at the City Council meeting on  
10 March 6?

11 **A.** No.

12 **Q.** Did you terminate Ms. Preston's employment because she  
13 disclosed that the City of Oakland was entering into contracts  
14 with firefighters Local 5 without the necessary approval from  
15 City Council?

16 **A.** No.

17 **Q.** Did you terminate Ms. Preston's employment because she  
18 disclosed that the City of Oakland was failing to collect  
19 Temporary Part Time employee union dues?

20 **A.** No.

21 **Q.** Did you terminate Ms. Preston's employment because she  
22 refused to add language to the Rainbow Teen Center Report  
23 referring Ms. Brooks for prosecution?

24 **A.** No.

25 **Q.** In September of 2013 did you have more than one



1 conversation with Ms. Preston involving her desire to conduct  
2 an investigation of Katano Kasaine?

3 A. Yes.

4 Q. Was her voice raised in more than one conversation with  
5 you during that time period?

6 A. Yes.

7 Q. Succinctly -- and I'm not asking you to go into details.  
8 I just want to ask you a few things here. Okay? Can you tell  
9 me succinctly the reasons why you, in fact, terminated  
10 Ms. Preston's employment?

11 A. LaWanna had two roles -- two chief roles. One was labor  
12 negotiations, and the other was investigations.

13 In labor negotiations what I --

14 Excuse me. I have a cold.

15 With labor negotiations what I've discovered is that she  
16 was not able to get along with the team assigned to labor and  
17 budget. And there were several complaints and discussions  
18 about her self-correcting. She was failing the -- to meet the  
19 City's processes with respect to closed session and appropriate  
20 review by myself and City Attorney for final reports proposed  
21 during closed session. In some cases we had to establish  
22 alternate protocols, because we didn't have an opportunity to  
23 review work that we had to sign off on. And she was not  
24 attending regularly the budget and labor meetings where, if she  
25 would have attended and participated, she could have been more

1 effective in her role.

2       On the investigations side, there's a couple of standards  
3 that an investigation should meet. It should be fair,  
4 impartial, thorough, and complete. And since she has such a  
5 high responsibility within the City for overseeing those  
6 investigations, I found that ripping evidence up that a witness  
7 was directed to provide that could be investigated and would  
8 contribute towards a thorough and complete investigation was  
9 unethical and inappropriate. I had her concerns about her  
10 ability to investigate the rest of the workforce.

11       And then when I learned that she pulled that same witness  
12 into her office in front of Deb Grant, who was being  
13 investigated, that -- to push her to answer questions on an  
14 investigation that she was not assigned -- rather, the Police  
15 Department -- that appeared unethical. It appeared that it  
16 could be interpreted as intimidating or -- or threatening,  
17 because Sonia was a temporary employee. And always both Winnie  
18 and Sonia were working at a temporary status, and they felt  
19 their job was at risk.

20       So I lost trust in LaWanna. I lost trust in her ability  
21 to maintain working relationships. The labor unions were --  
22 were already complaining about her. And her investigative  
23 integrity did not meet the standards that I thought needed to  
24 be met.

25       I should also add that on -- as I mentioned earlier, there

1 were two investigations on the Deb Grant issue. The audit did  
2 find inappropriate expenditures. There were retreats,  
3 manicures, pedicures. There were staff that weren't hired  
4 within the civil-service process. There were other  
5 expenditures that were not authorized with Council approval or  
6 budget allocation.

7 Q. Okay. Thank you. These issues --

8 Did you have conversations with the investigator prior to  
9 the final report being released?

10 A. I did.

11 Q. The information that you've just shared with us about  
12 that -- the Deb Grant issues -- was that shared with you by the  
13 investigator prior to the completion of the report?

14 A. Yes.

15 Q. Now, approximately when was it that you made up your mind  
16 to terminate Ms. Preston's employment?

17 A. About spring of 2013.

18 Q. And when you made up your mind to do that, did you share  
19 your opinions with anybody else?

20 A. I did.

21 Q. With whom?

22 A. I shared my concerns with Mayor Quan. And I also shared  
23 my concerns and sought the legal guidance of City Attorney  
24 Barbara Parker.

25 Q. Is there any reason why you delayed in actually

1 terminating Ms. Preston's employment since you made the  
2 decision in spring?

3 A. Yes.

4 Q. What was that?

5 A. One, we were in the middle of bargaining. And two, there  
6 were vacations planned. I had the whole month of August  
7 planned.

8 And others -- LaWanna had some vacations planned in July,  
9 August, I think. I didn't want to leave -- I didn't want to  
10 terminate her and then leave the country.

11 Q. Now -- and why did you pick October 3rd as the date to  
12 terminate her?

13 A. The -- the final I. A. report in writing was issued to me  
14 on September 30th after hours. And so I had an opportunity to  
15 review its final -- it in its final form on October 1st; and  
16 then my concerns around Ms. Preston's behavior with respect to  
17 the investigation which I had removed her from.

18 Q. I'd like for you to take a look -- there's a book in front  
19 of you there. And I'm going to shake make sure it's the right  
20 one first. Okay?

21 A. This one?

22 Q. Can you turn -- showing you Exhibit 1N.

23 A. Yes.

24 Q. Is this an e-mail that you received from -- an e-mail  
25 exchange between you and Ms. Preston in May of 2013?

1 A. It is.

2 MR. LAFAYETTE: I'd like to move that document into  
3 evidence, Your Honor.

4 MR. SIEGEL: No objection.

5 THE COURT: 1N is admitted.

6 (Trial Exhibit 1N received in evidence.)

7 THE COURT: Proceed.

8 BY MR. LAFAYETTE

9 Q. Can you take a look at Exhibit 1Q?

10 A. I have it.

11 Q. Is that an e-mail that you're copied on from Ms. Orologas  
12 to Ms. Preston dated June 13, 2013?

13 A. It is.

14 Q. And is this --

15 MR. LAFAYETTE: I'd like to move this document into  
16 evidence, Your Honor.

17 THE COURT: 1Q is admitted.

18 (Trial Exhibit 1Q received in evidence.)

19 THE COURT: Proceed.

20 BY MR. LAFAYETTE

21 Q. Is this an e-mail where -- did Ms. Orologas send this in  
22 your direction?

23 A. She did.

24 Q. And was this to point out that Ms. Preston had missed the  
25 past --

1           **MR. SIEGEL:** Objection. The document speaks for  
2 itself.

3           **THE COURT:** Sustained.

4           **MR. LAFAYETTE:** Put it up.

5           **THE COURT:** And leading.

6 (Document displayed.)

7 **BY MR. LAFAYETTE**

8 **Q.** You mentioned a few minutes ago something about the labor  
9 budget meetings. Is this an e-mail in reference to that?

10 **A.** It is.

11 **Q.** And what was the purpose of these meetings, quickly?

12 **A.** To review the labor-negotiations strategy, and the budget  
13 and fiscal implications with respect to that strategy, and have  
14 all hands in the room.

15 **Q.** Thank you. And then I'd like for you to take a look --

16 Did her not coming to those meetings impact the  
17 negotiation process?

18 **A.** They did.

19 **Q.** Explain quickly, please.

20 **A.** We -- we would talk about fiscal strategy and costing  
21 approaches, and the documents that we were preparing for  
22 LaWanna to submit to the labor groups; and not having that  
23 information. And she -- her not participating -- it -- the  
24 playing lot of catch-up, and having to fill a lot of voids for  
25 her. I didn't understand where her voids might be, and what

1 her own preparation was for the meetings.

2 Q. Now, at some point other people were brought into the  
3 negotiating process. Would that be accurate?

4 A. Yes.

5 Q. And can you tell us why other people were brought into the  
6 negotiating process?

7 A. There had been ongoing, multi-month discussions with  
8 respect to labor agreements. In some cases, we were making  
9 progress. In other cases, we weren't.

10 The complaints coupled with the desire to close the  
11 tables -- I brought in Sandre Swanson and Fred Blackwell to  
12 help participate in support the labor negotiations.

13 Q. Could you take a look at Exhibit 3N? It should be in the  
14 same binder you have there in front of you.

15 A. 3N?

16 Q. "N," as in "Nancy."

17 A. N.

18 Q. Is Exhibit 3N a document dated September 12, 2013?

19 A. Yes.

20 Q. And is that an e-mail between you and Ms. Preston?

21 A. Yes.

22 MR. LAFAYETTE: I'd like to move this one into  
23 evidence, Your Honor.

24 MR. SIEGEL: No objection.

25 THE COURT: 3N -- "Nancy" -- is admitted.

1 (Trial Exhibit 3N received in evidence.)

2 (Document displayed.)

3 **BY MR. LAFAYETTE**

4 **Q.** And does Exhibit 3N contain your response to Ms. Preston's  
5 e-mail concerning who, in fact, would be conducting the  
6 investigation?

7 **A.** It does.

8 **Q.** Now prior to September 27, 2013, did Ms. Preston ever tell  
9 you that a deadline was imminent with regard to responding to  
10 the union's grievance?

11 **A.** I don't think so.

12 **MR. LAFAYETTE:** No further questions, Your Honor.

13 **THE COURT:** Thank you.

14 Cross-examination.

15 **MR. SIEGEL:** Yes, Your Honor. Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. SIEGEL**

18 **Q.** So would it be fair to say, Ms. Santana, that even now, in  
19 the sixth day of trial, you're still coming up with reasons for  
20 the termination of Ms. Preston back in October 2013?

21 **MR. LAFAYETTE:** Objection. Argumentative,  
22 Your Honor.

23 **THE COURT:** Sustained.

24 **BY MR. SIEGEL**

25 **Q.** Well, let me ask you this. Was Ms. Preston terminated



1 because she was an at-will employee, and you could terminate  
2 her without cause?

3 **A.** She was an at-will employee. And there was enough  
4 information for me, in terms of working relationships and  
5 performance, that led me to no longer need her services.

6 **Q.** Well, my question is: Did you terminate her for no cause,  
7 or for cause?

8 **A.** I terminated --

9 **MR. LAFAYETTE:** Objection. It's argumentative and  
10 cumulative.

11 **THE COURT:** Overruled.

12 You may answer.

13 **THE WITNESS:** I terminated her under her at-will  
14 status.

15 **BY MR. SIEGEL**

16 **Q.** Okay. So because -- for lack of work?

17 **A.** We no longer needed her services.

18 **Q.** Okay. So that was the reason you gave her?

19 **A.** That's the reason.

20 **Q.** Was that correct?

21 **A.** Yes.

22 **Q.** And anything else you've come up with since then is not  
23 the reason you terminated her?

24 **MR. LAFAYETTE:** Objection, as it's argumentative,  
25 Your Honor.

1           **THE COURT:** Sustained.

2           **BY MR. SIEGEL**

3           **Q.** Let me ask you this. Do you recall answering  
4 interrogatories under oath in December of 2014?

5           **MR. LAFAYETTE:** Objection. It's cumulative.

6           **THE COURT:** Overruled.

7           **THE WITNESS:** I do.

8           **BY MR. SIEGEL**

9           **Q.** And at that time -- that is, in December 2014 -- was your  
10 answer to those interrogatories true and correct?

11          **A.** Yes.

12          **Q.** Now let me ask you this. You did not terminate Preston in  
13 June because negotiations were pending?

14          **A.** That's right.

15          **Q.** And you needed her to continue to represent the City in  
16 those negotiations?

17          **A.** That's not what I said.

18          **Q.** That's my question.

19          **A.** I did not want to be disruptive to the labor or bargaining  
20 process.

21          **Q.** And you wanted Ms. Preston to continue in those  
22 negotiations?

23          **A.** I brought in additional people, and allowed for LaWanna to  
24 continue in that process.

25          **Q.** You didn't fire her in June because you wanted her to

1 continue with the negotiations. Correct?

2 **MR. LAFAYETTE:** Objection. It's argumentative.

3 **THE COURT:** Overruled.

4 You may answer the question.

5 **THE WITNESS:** No. Let me put the context. We have  
6 many tables open. We had regional strikes with multiple public  
7 agencies, where the Bay Bridge was -- the BART was being closed  
8 down. Park services were being closed down. There were  
9 strikes out on the city of Oakland streets. State legislators  
10 were considering legislation for addressing issues where the  
11 East Bay gets closed down. And I didn't want to throw in  
12 another dynamic that could further delay how close we were to  
13 closing these tables.

14 **BY MR. SIEGEL**

15 **Q.** So you wanted Ms. Preston to continue her work in the  
16 negotiations?

17 **A.** I wanted to close the tables.

18 **Q.** You said, I believe, that you didn't fire her in June  
19 because the negotiations were taking place. Correct?

20 **A.** That's correct.

21 **Q.** And you wanted her to continue doing the negotiations?

22 **MR. LAFAYETTE:** Objection. Cumulative and  
23 argumentative.

24 **THE COURT:** Sustained.

25

1 **BY MR. SIEGEL**

2 **Q.** Now with respect to what you learned from Ms. Lara about  
3 the Deb Grant investigation -- you learned that after  
4 Ms. Preston was terminated. Correct?

5 **MR. LAFAYETTE:** Objection. It's overbroad.

6 **THE COURT:** Overruled.

7 **THE WITNESS:** I don't know what you're talking about  
8 in terms of with respect to what I learned. Can you offer more  
9 detail?

10 **BY MR. SIEGEL**

11 **Q.** Sure. You learned after Ms. Preston was terminated --

12 Well, let me go back a step.

13 Isn't it true that on the day Ms. Preston was terminated,  
14 you and Ms. Kasaine and Ms. Parker met with Ms. Lara and  
15 Winnie Anderson in your office?

16 **A.** Yes.

17 **Q.** And purpose of that conversation was to see what  
18 Ms. Winnie Anderson and Sonia Lara could tell you about  
19 Ms. Preston's work?

20 **A.** I received a call from Katano and Barbara that Sonia and  
21 Winnie were bringing really unusual information to their  
22 attention about LaWanna's performance and actions. I was out  
23 of the office. And we made arrangements to meet in my office  
24 when I got there.

25 **Q.** Okay. And they shared with you some of the things

1 Ms. Lara said in this court last Friday and today?

2 A. They did.

3 Q. Okay. So these were things that you learned from her  
4 after you terminated Ms. Preston?

5 MR. LAFAYETTE: Objection. It's vague.

6 THE COURT: Overruled.

7 THE WITNESS: I learned of additional inappropriate  
8 behavior after she was terminated, through Sonia and Winnie.

9 BY MR. SIEGEL

10 Q. Okay. Now, you also mentioned the IAD investigation.  
11 Correct?

12 A. Yes.

13 Q. And I think we talked about this when you were testifying  
14 last week, but isn't it true that the IAD investigators did not  
15 recommend disciplinary action against Ms. Grant or against  
16 Ms. Preston?

17 MR. LAFAYETTE: Cumulative to last week.

18 THE COURT: Overruled.

19 THE WITNESS: The IAD is not charged with assigning  
20 or recommending discipline. They're assigned with looking at  
21 the facts and making findings of the case. So, no, they would  
22 not have directed or recommended discipline.

23 BY MR. SIEGEL

24 Q. Didn't the IAD report conclude that both Ms. Grant and  
25 Ms. Preston were credible?

1 A. No. They -- they concluded that the -- that LaWanna's  
2 actions needed attention with respect to her role as overseeing  
3 citywide investigations. And --

4 Q. Didn't they conclude that she was credible?

5 A. I don't know what specific location, but if you look at  
6 the back page -- the last page of that investigation -- it says  
7 that I needed to address the matter.

8 Q. I see what the last page says. You can look at  
9 Exhibit 4J.

10 A. Is it the binder that I have in front of me? It's Joint  
11 Trial Exhibits, Volume One?

12 MR. SIEGEL: I don't know. It should say which  
13 exhibits are -- the front part of it.

14 THE COURT: It's in Volume Two, the second binder.

15 MR. SIEGEL: So it's probably going to be in one of  
16 those to your left. Have you found it?

17 THE WITNESS: I did. I found it.

18 BY MR. SIEGEL

19 Q. So the last page really just includes the names of the  
20 people in the Police Department. Correct?

21 A. The last page? It does.

22 Q. Okay. So the -- the next-to-the-last page, which is page  
23 41 -- didn't IA conclude that neither Ms. Preston nor Ms. Grant  
24 interfered with the IA investigation?

25 A. I was focused on the, "However, their practice of

1 discussing ongoing investigations and their rationale behind  
2 this is concerning and should be addressed." That was my --  
3 what my earlier comment was referring to.

4 **BY MR. SIEGEL**

5 **Q.** Didn't the IA conclude that neither Ms. Preston nor  
6 Ms. Grant interfered with the IA investigation?

7 **A.** The sentence above does say that based on the information  
8 gathered during the course of this investigation, there is no  
9 evidence to support Ms. Preston or Ms. Grant interfered with  
10 the investigation.

11 **Q.** Okay. And didn't the IA also conclude that Ms. Preston  
12 and Ms. Grant were credible?

13 **MR. LAFAYETTE:** Objection, Your Honor. Best  
14 evidence.

15 **THE COURT:** Overruled.

16 And if you could pull the microphone a little closer to  
17 you, that will assist the jurors to hear you.

18 **THE WITNESS:** Okay.

19 **THE COURT:** Thank you.

20 **THE WITNESS:** I don't remember. It's a rather long  
21 document. If you want to -- I just don't remember that  
22 statement in there. I was referenced on the last page.

23 **BY MR. SIEGEL**

24 **Q.** Okay. So look at page 34, please.

25 **A.** I'm there.

1 Q. Are you there?

2 A. I am.

3 Q. You see towards the bottom of the page, just to refresh  
4 your recollection. Is your recollection refreshed that the  
5 Internal Affairs Division of the Oakland Police Department  
6 determined that Ms. Preston was credible?

7 A. It says, "LaWanna Daryelle LaWanna Preston was found  
8 credible. She admitted to tearing up those statement;  
9 discarding it. She admitted to engaging in various  
10 conversations with Grant concerning the investigation.  
11 However, she had no specific recollection of the specific  
12 content or their discussion."

13 Q. Okay. And they also found Deborah Grant to be credible?

14 A. It says, "Deb Grant was found credible. Her statement was  
15 consistent with physical evidence and witnesses. She also  
16 admitted to engaging in various discussions with Lara and  
17 Preston concerning this investigation. Grant's candidness  
18 suggests that there is no reason to question her credibility."

19 Q. And just to be clear, the purpose of the IA investigation  
20 was twofold. One, to investigate whether Ms. Grant had maiden  
21 appropriate expenditures. Correct?

22 A. That was the purpose of the audit.

23 Q. Okay. Was it also the purpose of the IA investigation?

24 A. The -- I wanted to have a concurrent investigation to  
25 understand whether there was any criminal activity with respect



1 to the inappropriate procurements.

2 **Q.** Right. And then there was also --

3 So that was one of the topics.

4 And the other topic was whether what happened between  
5 Ms. Preston and Ms. Lara interfered with the investigation of  
6 Ms. Grant. Correct?

7 **A.** Yes.

8 **MR. SIEGEL:** Thank you. I have nothing further.

9 **THE COURT:** Redirect?

10 **MR. LAFAYETTE:** Just short. Very short.

11 **REDIRECT EXAMINATION**

12 **BY MR. LAFAYETTE**

13 **Q.** Regardless of what the investigation -- those conclusions  
14 that were just discussed with Mr. Siegel, was there behavior  
15 reported to you involving Ms. Preston that you found  
16 problematic, given her position in the City?

17 **A.** Yes.

18 **Q.** And what was it about her behavior that you found  
19 problematic, given her position in the City?

20 **A.** As I mentioned earlier, the inability to get along with  
21 her work colleagues; the inability to work well with labor  
22 unions. We talked last week about circulating e-mails  
23 inappropriately; and in one case, it was related to an  
24 investigation, and concerns about violating employees' privacy  
25 during investigations. And then the issues around ripping up

1 evidence, and bringing in a witness who was providing  
2 statements to the Police Department in front of the person who  
3 was accused of the inappropriate action, to see if she would  
4 speak about the nature of her IA investigation interview. And  
5 then just lack of performance. Insubordination. She didn't  
6 want to accept that I had decided to go elsewhere for an  
7 investigation, because she and Katano did not get along. I no  
8 longer trusted her investigation abilities, as well as not  
9 following processes with respect to closed-session procedures  
10 or attending meetings.

11 **Q.** Could you just quickly turn to page 40 of the report?  
12 That would be Exhibit 4J.

13 **MR. LAFAYETTE:** You know, Your Honor, I'll just leave  
14 it. I'll just leave it.

15 **THE COURT:** All right. We'll take a break then, a  
16 short break of about five minutes or as long as needed for the  
17 jury to ask any written questions that you wish to. And we'll  
18 return with those questions or further evidence. Thank you.

19 **THE CLERK:** Please rise.

20 (Proceedings were heard outside the presence of the jury:)

21 **THE COURT:** All right. We've got a question for the  
22 witness. And we'll bring in our jurors to have them hear the  
23 answer.

24 (Proceedings were heard in the presence of the jury:)

25 **THE COURT:** All right. Please be seated, everyone.

1 Our jurors have returned. Ms. Santana's still on the stand and  
2 remains under oath. Ms. Santana, a follow-up question from the  
3 jurors. It's got two parts, so I'll read the entire thing  
4 before you answer. The question concerns the October 2nd,  
5 2013, telephone call between you and Ms. Preston. And the  
6 question is: At the time of the October 2nd cell-phone call  
7 with Ms. Preston, who, of everyone, was in your office during  
8 the speaker-phone conversation? And what was said by you and  
9 Ms. Preston?

10 I'll read it all again.

11 At the time of the October 2nd cell-phone call with  
12 Ms. Preston, who, of everyone, was in your office during the  
13 conversation? And what was said by you and Ms. Preston?

14 **THE WITNESS:** The October 2nd meeting included  
15 Barbara Parker, and Otis McGee, and myself.

16 And then the purpose of the meeting was a meet-and-greet  
17 for Otis Green. We were talking about the scope of the  
18 investigation and some of the issues, as well as issues around  
19 transfer of investigatory documents and evidence.

20 **THE COURT:** And what was said by you and Ms. Preston  
21 during the telephone conversation?

22 **THE WITNESS:** LaWanna was still expressing concern  
23 about my decision to go with a third party. I did inform her  
24 that I was in a meeting with the investigator that had been  
25 hired through the City Attorney's Office. And we talked about

1 the transfer of documents and evidence related to the  
2 investigation that was going to be conducted.

3 **THE COURT:** Mr. Siegel, any follow-up?

4 **RE CROSS-EXAMINATION**

5 **BY MR. SIEGEL**

6 **Q.** What time was the telephone call?

7 **A.** It was in the afternoon.

8 **Q.** Can you be more precise?

9 **A.** I would have to check my calendar.

10 **MR. SIEGEL:** That's all. Thank you.

11 **THE COURT:** Mr. Lafayette, any further examination?

12 **MR. LAFAYETTE:** No, Your Honor.

13 **THE COURT:** You may step down. Thank you very much.

14 (Witness excused.)

15 **THE COURT:** Does the Defense have any further  
16 evidence to present to the jury?

17 **MR. LAFAYETTE:** No, Your Honor. Defense rests.

18 **THE COURT:** All right. Ladies and gentlemen of the  
19 jury, we've reached a second milestone in the case, which is  
20 the close of the Defense evidence.

21 At this time I have a stipulation of fact to read to you.  
22 A stipulation of fact is an agreement of the parties as to a  
23 fact in evidence. This is evidence, just like the other  
24 evidence you've heard from the witness stand and you will see  
25 in documentary form. It is evidence you can consider in

1 rendering your judgment in the case. And this is the  
2 stipulation of fact. Ms. Preston is seeking noneconomic  
3 damages for mental and emotional distressed, but she is not  
4 seeking damages for psychiatric harm. I'll read it again.  
5 Ms. Preston is seeking noneconomic damages for mental and  
6 emotional distress, but she is not seeking damages for  
7 psychiatric harm.

8 You'll get further instruction about those facts when we  
9 get to the closing jury instructions.

10 Mr. Siegel, is there any rebuttal evidence that  
11 Ms. Preston wish to put on?

12 **MR. SIEGEL:** No, Your Honor.

13 **THE COURT:** All right. So that quickly reaches  
14 another milestone in the case, which is the opportunity for  
15 rebuttal evidence from Ms. Preston.

16 So at this point, now we have concluded all of the  
17 evidence that the jury will consider in its deliberations. And  
18 it's my opportunity to instruct you on the law that you will  
19 apply during your deliberations. And after my instruction of  
20 the law, we're going to take a lunch break and return for the  
21 closing arguments from each of the attorneys.

22 We have a copy of the closing Jury Instructions somewhere.  
23 And if we don't have it yet, maybe we need to make copies.

24 **THE CLERK:** We do, Your Honor.

25 **THE COURT:** If we can please circulate that -- both a

1 copy of the Verdict Form and the closing Instructions -- then  
2 you can follow along as I read them to you. Hold on for one  
3 more minute. We're going to get the Verdict Form for you.  
4 And as she passes it out, let me thank Barbara Espinoza,  
5 courtroom deputy for Judge Breyer, who's stepping in today to  
6 help us with the trial.

7 **THE CLERK:** Are we missing one?

8 **JUROR BRYAN:** (Indicating.)

9 **JURY INSTRUCTIONS**

10 **THE COURT:** All right. Members of the jury, now that  
11 you've heard all of the evidence, it's my duty to instruct you  
12 as to the law of the case. Each of you has received a copy of  
13 these instructions that you may take with you to the jury room  
14 to consult during your deliberations.

15 You must not infer from these instructions or from  
16 anything I may say or do as indicating that I have an opinion  
17 regarding the evidence or what your verdict should be. It is  
18 your duty to find the facts from all the evidence in the case.  
19 To these facts you will apply the law as I give it to you. You  
20 must follow the law as I give it to you, whether you agree with  
21 it or not. And you must not be influenced by any personal  
22 likes or dislikes, opinions, prejudices or sympathy. That  
23 means you must decide the case solely on the evidence before  
24 you. You will recall that you took an oath to do so.

25 In following my instructions, you must follow all of them,

1 and not single out some and ignore others. They're all  
2 important.

3 Summary of the claims and defenses in this case.

4 Now I will give you a brief review of the positions of the  
5 parties. The plaintiff, Daryelle LaWanna Preston, claims that  
6 Deanna Santana, acting on behalf the City of Oakland,  
7 retaliated against Preston in violation of the California Labor  
8 Code by terminating Preston's employment after Preston  
9 disclosed or refused to participate in an act that she  
10 reasonably believed violated a state or federal law.

11 Four disclosures or refusals are at issue. First, Preston  
12 claims that she refused to add language to the Rainbow Teen  
13 Center Report referring Desley Brooks for prosecution, because  
14 she believed that doing so would be illegal racial  
15 discrimination; or Preston claims that she refused to confirm  
16 Santana's statement to Councilmember Desley Brooks at the  
17 March 6th, 2012, City Council meeting, because she believed  
18 that doing so would be committing perjury; or Preston claims  
19 that she disclosed that the City of Oakland was entering into  
20 contracts with the Firefighters Local 55 without the necessary  
21 approval from the City Council, because she believed that doing  
22 so would be a violation of the California Government Code; or,  
23 four, Preston claims that she disclosed that the City of  
24 Oakland was failing to collect Temporary Part Time employees'  
25 union dues, because she believed that the failure was a

1 violation of the California Government Code.

2       The City of Oakland denies Preston's claims. And the City  
3 of Oakland says that Preston was terminated for legitimate  
4 reasons having nothing to do with any alleged disclosures of or  
5 refusals to participate in violations of state or federal law.  
6 According to the City of Oakland, Preston was terminated  
7 because she was not performing her job duties adequately.

8       The claims presented now are different than the claims  
9 stated at the beginning of the case. There is no longer a  
10 claim being presented against Deanna Santana under Section 1983  
11 based on the First Amendment right to free speech. Therefore  
12 you, the jury, are no longer being asked to determine that  
13 First Amendment claim. You should not speculate as to the  
14 reasons why. The fact that you are not determining that claim  
15 should have no bearing on your determination of liability and  
16 damage on the California Labor Code claim against the City of  
17 Oakland. You must base your decision only on the evidence  
18 presented at trial and the law that I am providing to you.

19       The burden of proof. Preponderance of the evidence.

20       Proof by a preponderance of the evidence means proof that  
21 something is more likely than not. It means that certain  
22 evidence, when compared to the evidence opposed to it, has the  
23 more convincing force, and makes you believe that something is  
24 more likely true than not.

25       Preponderance of the evidence does not depend on the



1 number of witnesses. If the evidence on any particular point  
2 is evenly balanced, the party having the burden of proof is not  
3 to prove that point by a preponderance of the evidence, and you  
4 must find against the party on that point.

5 In deciding whether any fact has been proved by a  
6 preponderance of the evidence, you may, unless I tell you  
7 otherwise, consider the stipulated facts and the testimony of  
8 all witnesses, regardless of who called them, and all exhibits  
9 received into evidence, regardless of who produced them.

10 Clear and convincing evidence.

11 Clear and convincing evidence is a stricter standard of  
12 proof than proof by a preponderance of the evidence. To  
13 establish proof by clear and convincing evidence means to prove  
14 something that is highly probable, reasonably certain, and free  
15 from serious doubt.

16 Evidence.

17 Evidence you may consider. The evidence you are to  
18 consider in deciding what the facts are consists of, one, the  
19 sworn testimony of any witness; two, the exhibits received into  
20 evidence; and three, any facts to which the lawyers have  
21 agreed. That's the one stipulation.

22 Evaluation of witness testimony.

23 In deciding the facts in this case, you may have to decide  
24 which testimony to believe, and which testimony not to believe.  
25 You may believe everything a witness says, or part of it, or

1 none of it.

2       Proof of a fact does not necessarily depend on the number  
3 of witnesses who testify about it. In considering the  
4 testimony of any witness, you may take into account, one, the  
5 opportunity and ability of the witness to see or hear or know  
6 the things testified to; two, the witness' memory; three, the  
7 witness' manner while testifying; four, the witness' interest  
8 in the outcome of the case and any bias or prejudice; five,  
9 whether other evidence contradicted the witness' testimony;  
10 six, the reasonableness of the witness' testimony in light of  
11 all of the evidence; and, seven, any other factors that bear on  
12 believability.

13       The weight of the evidence as to a fact does not  
14 necessarily depend on the number of witnesses who testify about  
15 it.

16       Expert witnesses.

17       Some witnesses, because of education or experience, are  
18 permitted to state opinions and the reasons for those opinions.  
19 Opinion testimony should be judged just like any other  
20 testimony. You may accept it or reject it, and give it as much  
21 weight as you think it deserves considering the witness'  
22 education and experience, the reasons given for the opinion,  
23 and all of the other evidence in the case.

24       The expert witnesses who testified in this case were  
25 Margo Ogus and Mark Cohen. An expert witness may be asked to

1 assume that certain facts are true, and to give an opinion  
2 based upon that assumption. This is a hypothetical question.  
3 If you determine that any fact assumed in such a question has  
4 not been established by the evidence, you should determine the  
5 effect of the failure to establish that fact upon the value of  
6 an opinion based on that fact.

7 Deposition in lieu of live testimony.

8 A deposition is a sworn testimony of a witness taken  
9 before trial. The witness is placed under oath to tell the  
10 truth, and lawyers for each party may ask questions. The  
11 questions and answers are recorded. You should consider  
12 deposition testimony presented to you in court in lieu of live  
13 testimony in the same way as if a witness has been present to  
14 testify. The following deposition testimony was presented to  
15 you in court in lieu of live testimony: Joe Keffer.

16 Charts and summaries not received in evidence.

17 Certain charts and summaries not received in evidence have  
18 been shown to you in order to help explain the contents of  
19 records, documents, or other evidence in the case. They are  
20 not, themselves, evidence or proof of any facts. If they do  
21 not correctly reflect the facts or figures shown by the  
22 evidence in the case, you should disregard these charts and  
23 summaries, and determine the facts from the underlying  
24 evidence.

25 Things you may not consider.

1 In reaching your verdict, you may consider only the  
2 testimony and exhibits received into evidence. Certain things  
3 are not evidence, and you may not consider them in deciding  
4 what the facts are. I will list them for you.

5 One. Arguments and statements by lawyers who are not  
6 witnesses are not evidence. The lawyers representing the  
7 parties during the trial are not witnesses. What they have  
8 said in their opening statements and their closing arguments  
9 and at other times is intended to help you interpret the  
10 evidence, but it is not evidence. If the facts as you remember  
11 them differ from the way the lawyers state them, your memory of  
12 them controls.

13 Two. Questions and objections by lawyers are not  
14 evidence. Attorneys have a duty to their clients to object  
15 when they believe a question is improper under the Rules of  
16 Evidence. You should not be influenced by the objection or by  
17 my ruling on an objection.

18 Third, testimony that has been excluded or stricken or  
19 that you have been instructed to disregard is not evidence, and  
20 must not be considered.

21 Four. Anything you may have seen or heard when the Court  
22 was not in session is not evidence. You are to decide the case  
23 solely on the evidence received during the trial.

24 Types of evidence.

25 Evidence may be direct or circumstantial. Direct evidence

1 is direct proof of a fact, such as testimony by a witness about  
2 what that witness personally saw or heard or did.

3 Circumstantial evidence is proof of one or more facts from  
4 which you could find another fact. You should consider both  
5 kinds of evidence. The law makes no distinction between the  
6 weight to be given to either direct or circumstantial evidence.  
7 It is for you to decide how much weight to give to any  
8 evidence.

9 By way of example, if you wake up in the morning and see  
10 the sidewalk is wet, you may find from that fact that it rained  
11 during the night. However, other evidence, such as a turned-on  
12 garden hose, may provide a different explanation for the  
13 presence of water on the sidewalk. Therefore, before you  
14 decide that a fact has been proved by circumstantial evidence,  
15 you must consider all of the evidence in the light of reason  
16 experience and common sense.

17 Evidence in electronic format.

18 The video of the March 6th, 2012, City Council meeting  
19 will be provided to you in electronic format, and you'll be  
20 permitted to view it in the jury room on a computer provided by  
21 the Court. A Court technician will show you how to operate the  
22 computer and how to locate and view that exhibit on the  
23 computer.

24 You will also be provided with a paper list of all the  
25 paper exhibits received in evidence. If you need additional

1 equipment or supplies, you may make a request by sending a note  
2 through the courtroom deputy.

3 In the event of any technical problem or if you have any  
4 questions about how to operate the computer, you may send a  
5 note to the courtroom deputy, signed by the presiding juror or  
6 by one or more members of the jury. Be as brief as possible in  
7 describing the problem, and don't refer to or discuss any  
8 exhibit you are attempting to view.

9 If a technical problem requires hands-on maintenance or  
10 instruction, a Court technician may enter the jury room with  
11 the courtroom deputy present, for the sole purpose of assuring  
12 that the only matter discussed is the technical problem. When  
13 the Court technician or any nonjuror is in the jury room, the  
14 jury must not deliberate. No juror may say anything to the  
15 Court technician or any nonjuror, other than to describe the  
16 technical problem or to seek any information about how to  
17 operate the equipment. Do not discuss any exhibit or any  
18 aspect of the case with the Court technician or any nonjuror.

19 The sole purpose of providing a computer in the jury room  
20 is to enable the jurors to view the exhibits received in  
21 evidence in the case. Don't use the computer for any other  
22 purpose. At my direction, technicians have taken steps to make  
23 sure the computer does not permit access to the Internet or to  
24 any outside database, directory, games, or other materials.  
25 Don't attempt to alter the computer to obtain access to such

1 materials. If you discover, despite our best efforts, that the  
2 computer provides access to outside materials, you must inform  
3 me immediately, and refrain from viewing any such materials.  
4 Please do not remove the computer or any electronic data from  
5 the jury room, and don't copy the data.

6 Preston's California Labor Code claim against the City of  
7 Oakland.

8 Elements.

9 Preston claims that Santana, acting on behalf of the City  
10 of Oakland, terminated Preston in retaliation for a disclosure  
11 of information and refusal to participate in unlawful acts. In  
12 order to establish this claim, Preston must prove all of the  
13 following.

14 One, that the City of Oakland was Preston's employer.

15 Two, that Santana, acting on behalf of the City of  
16 Oakland, believed that Preston disclosed information or refused  
17 to participate in acts.

18 Three, that Preston had reasonable cause to believe her  
19 violations of or noncompliance with the law.

20 Four, that Santana, acting on behalf of the City of  
21 Oakland, terminated Preston.

22 Five, that Preston's disclosure of information and/or  
23 refusal to participate in these activities was a contributing  
24 factor in the City of Oakland's decision to discharge Preston.

25 Six, that Preston was harmed.

1 And seven, that Santana's conduct acting on behalf of the  
2 City of Oakland was a substantial factor in causing Preston's  
3 harm.

4 The disclosure of policies that an employee believes to be  
5 merely unwise, wasteful, gross misconduct or the like is not  
6 protected. Instead, Preston must have reasonably believed that  
7 the City of Oakland's policies violated federal or state rules  
8 or regulations.

9 It is not Preston's motivation for her disclosure but only  
10 the content of that disclosure that determines whether the  
11 disclosure is protected. A disclosure is protected even though  
12 disclosing information may be part of Preston's job duties.

13 The City's of Oakland's defense.

14 If Preston proves that her disclosure or information --

15 Excuse me. I'll start the sentence again.

16 If Preston proves that her disclosure of information or  
17 refusal to participate in an unlawful act was a contributing  
18 factor to her termination, the City of Oakland is not liable if  
19 it proves by clear and convincing evidence that it would have  
20 terminated Preston anyway for legitimate independent reasons.

21 Damages.

22 It is now my duty to instruct you about the measure of  
23 damages. The fact that I'm instructing you about the proper  
24 measure of damages should not be considered as my suggesting  
25 which party is entitled to your verdict in the case.



1 Instructions about the measure of damages are given for your  
2 guidance only if you find that a damages award is in order. It  
3 is for you to determine what damages, if any, have been proved.

4 If you decide that Preston has proved her claim against  
5 the City of Oakland, you also must decide how much money will  
6 reasonably compensate Preston for the harm. This compensation  
7 is called "damages." The amount of damages must include an  
8 award for each item of harm that was caused by the City of  
9 Oakland's wrongful conduct, even if that particular harm could  
10 not have been anticipated.

11 Preston does not have to prove the exact amount of damages  
12 that will provide reasonable compensation for the harm.  
13 However, you must not speculate or guess in awarding damages.

14 The following are the specific items of damages claimed by  
15 Preston. One, economic damages; and two, emotional-distress  
16 damages, also known as "noneconomic damages."

17 One, economic damages. The following are the specific  
18 items of economic damages claimed by Preston. Past lost  
19 earnings, future lost earnings, and future pension-plan  
20 benefits. To recover damages for past lost earnings, Preston  
21 must prove the amount of earnings she has lost to date. To  
22 recover damages for future lost earnings and future  
23 pension-plan benefits, Preston must prove the amount of  
24 earnings she'll reasonably be certain to lose in the future as  
25 a result of this injury. If you decide that Preston's harm

1 includes future economic damages or loss of earnings and/or  
2 loss of pension-plan benefits, then the amount of those future  
3 damages must be reduced to their present cash value. This is  
4 necessary because money received now will, through investment,  
5 grow to a larger amount in the future.

6 The City of Oakland must prove the amount by which future  
7 damages should be reduced to present value. To find present  
8 cash value, you must determine the amount of money that, if  
9 reasonably invested today, will provide Preston with the amount  
10 of her future damages. You may consider expert testimony in  
11 determining the present cash value of future economic damages.

12 Noneconomic damages. Emotional distress.

13 Preston is seeking noneconomic damages for mental and  
14 emotional distress, but she is not seeking damages for  
15 psychiatric harm. No fixed standard exists for deciding the  
16 amount of these noneconomic damages. You must use your  
17 judgment to decide a reasonable amount based on the evidence  
18 and your common sense.

19 Conduct of the jury.

20 Because you must base your verdict only on the evidence  
21 received in the case and on those instructions, I remind you  
22 that you must not be exposed to any other information about the  
23 case or to the issues it involves. Except for discussing the  
24 case with your fellow jurors during deliberations, do not  
25 communicate with anyone in any way and don't let anyone else

1 communicate with you in any way about the merits of case or  
2 anything to do with it. This includes discussing the case in  
3 person, in writing, by phone or electronic means, e-mail, text,  
4 or any chat, blog, website, or other feature. This applies to  
5 communicating with your family members, your employer, media or  
6 press, and it includes communicating with people in a trial.

7 If you are asked or approached in any way about your jury  
8 service or anything about this case, you must respond that  
9 you've been ordered not to discuss the matter, and to report  
10 the contact to the Court. So don't read, watch, or listen to  
11 any news or media accounts or commentary about the case. Don't  
12 do any research. Don't consult dictionaries. Don't search the  
13 Internet. Don't use other reference materials. Don't make any  
14 investigation of your own in any way. Don't try to learn about  
15 the case on your own.

16 The law requires these restrictions to ensure the parties  
17 have a fair trial based on the same evidence that each party  
18 had an opportunity to address in court. A juror who violates  
19 these restrictions jeopardizes the fairness the proceedings,  
20 and a mistrial could result that would require the entire trial  
21 process to start over. If any juror is exposed to any outside  
22 information, please notify the Court immediately.

23 The jury's duty to deliberate.

24 When you begin your deliberations, you should elect one  
25 members of the jury as your presiding juror. That person will

1 preside over the deliberations, and speak for you here in  
2 court. You will then discuss the case with your fellow jurors  
3 to reach agreement if you can do so. Your verdict must be  
4 unanimous.

5 Each of you must decide the case for yourself, but you  
6 should do so only after you've considered all of the evidence,  
7 discussed it fully with the other jurors, and listened to the  
8 views of your fellow jurors. Don't hesitate to change your  
9 opinion if the discussion persuades you that you should. Do  
10 not come to a decision simply because other jurors think it is  
11 right. It is important that you attempt to reach a unanimous  
12 verdict, but of course, only if each of you can do so after  
13 having made your own conscientious decision do not change an  
14 honest belief about the weight and effect of the evidence  
15 simply to reach a verdict.

16 If it becomes necessary during your deliberations to  
17 communicate with me, you may send a note through the courtroom  
18 deputy, signed by your presiding juror or by one or more  
19 members of the jury. No members of the jury should ever  
20 attempt to communicate with me except by a signed writing. I  
21 will communicate with any members of the jury on anything  
22 concerning the case only in writing, or here in open court. If  
23 you send out a question, I will consult with the parties before  
24 answering it, which may take some time. You may continue your  
25 deliberations while waiting for the answer to any question.

1 Remember that you are not to tell anyone -- including  
2 me -- how the jury stands, numerically or otherwise, until  
3 after you've reached a unanimous verdict, or have been  
4 discharged. Do not disclose any vote count in any note to the  
5 Court.

6 A Verdict Form has been prepared for you, and you've been  
7 provided a copy of it. After you've reached a unanimous  
8 agreement on the verdict, your presiding juror will then fill  
9 in the form given to you, sign and date it, and will advise the  
10 courtroom deputy that you're ready to return to the courtroom  
11 to present your verdict.

12 That ends the instructions of the law.

13 It's now 12:09. We're going to take a lunch break. And  
14 when we return from the lunch break, it will be the closing  
15 arguments. The plaintiff, Ms. Preston, will go first. Then  
16 the Defense will give their closing argument. And  
17 Ms. Preston's team will get the final word. And then you'll  
18 begin your deliberations.

19 I am anxious to get to the deliberations today, so I'm  
20 going to ask you to take a 50-minute lunch break. Return at  
21 1:00 o'clock for the closing arguments. Following those, the  
22 case will be yours. Thank you. We're in recess.

23 **THE COURT:** We're in recess until 1:00 o'clock.

24 (Proceedings were heard outside the presence of the jury:)

25 **MR. SIEGEL:** I have -- sorry about this. There is a

1 problem with the Verdict Form. The Verdict Form says, in  
2 Question 2, "Did Preston prove by a preponderance of the  
3 evidence that her disclosure and/or refusal to participate in  
4 an act that she reasonably believed violated a state or federal  
5 law was a substantial motivating factor for her termination?"

6 I'm focusing on the words "substantial motivating."

7 In the jury instruction, which is verbatim from CACI, it  
8 states on Item 5 of the Labor Code violation on page 8, that  
9 Preston's disclosure of information and/or refusal to  
10 participate in these activities was a contributing factor in  
11 City of Oakland's decision. I believe that the jury  
12 instruction is correct, and that the Verdict Form should be  
13 modified to reflect the jury instruction.

14 **THE COURT:** Mr. Lafayette, do you have any immediate  
15 response?

16 **MR. LAFAYETTE:** No, I don't, Your Honor. I'm  
17 looking -- trying to look up CACI, myself, as we speak; but I  
18 will have one as soon as that can be done.

19 **THE COURT:** All right. I'm going to ask my deputy to  
20 give the jury a little more time for lunch, so that we can work  
21 that out without them having to wait around. So let's have  
22 them come back at 1:15. They may have already gone, but if we  
23 can, catch them. And let's talk about it at 1:00 o'clock.

24 **MR. SIEGEL:** Okay.

25 **THE COURT:** Get it resolved before we have the

1 closing arguments.

2 **MR. LAFAYETTE:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 (Recess taken from 12:12 p.m. until 1:00 p.m.)

5 Afternoon Session

1:00 p.m.

6 (Proceedings were heard outside the presence of the jury:)

7 **THE COURT:** All right. Good afternoon.

8 **MR. SIEGEL:** Good afternoon.

9 **THE COURT:** Our jurors are not present.

10 There was an objection to the Verdict Form before we took  
11 our break. And, while one can say that the objection was not  
12 timely, I think the best course of conduct is to address it.  
13 And my proposal to address it is to amend what was paragraph 2  
14 of the Verdict Form, splitting that into 2, 3, and 4, to track  
15 the language in the instruction of law given to the jury in  
16 paragraphs 5, 6, and 7 on page 8, so there will be consistency  
17 between the language.

18 In a prior version of paragraph 2, there was a collapsing  
19 of the language from those provisions, but no particular box  
20 for a substantial factor in causing Preston's harm. And  
21 there's a different term used. Now we've got the same  
22 terminologies in both the instruction and the Verdict Form  
23 broken into three different paragraphs. So that's my proposed  
24 change. It would not require a change in the instruction,  
25 because the instruction given will match this Verdict Form.

1 Does that make sense to you, Mr. Siegel?

2 **MR. SIEGEL:** Yes.

3 **THE COURT:** And, Mr. Lafayette, does that make sense  
4 to you?

5 **MR. LAFAYETTE:** It does, Your Honor; but I'm checking  
6 to see. I believe that there is a CACI instruction which  
7 defines "contributing factor." And I think if we're going to  
8 use that language, it would be appropriate to use the CACI  
9 instruction. So that's the only thing I'm looking at, because  
10 I think there is --

11 **THE COURT:** All right. And have you found anything?

12 **MR. LAFAYETTE:** Not yet, Your Honor. Just a second.

13 **THE COURT:** Do we already have copied the revised  
14 Verdict Form, potentially, for the jurors?

15 **THE CLERK:** No, Your Honor. Would you like copies  
16 for all of the jurors?

17 **THE COURT:** Well, hold on for a minute. I'll give  
18 Mr. Lafayette one more minute to raise any further concerns;  
19 but yes, potentially we will.

20 **THE CLERK:** Okay.

21 **THE COURT:** And when we do that, we'll take back the  
22 Verdict Form we gave them previously.

23 **THE CLERK:** I've done that, Your Honor.

24 **THE COURT:** Excellent. Thank you.

25 **MR. LAFAYETTE:** The only one I'm coming up with at



1 this point, Your Honor, is the definition of "substantial  
2 factor," which is CACI 430, which says, "A substantial factor  
3 in causing harm is a factor that a reasonable person would  
4 consider that contribute to the harm, and must be more than  
5 remote or trivial factor. It does not have to be the only  
6 cause of the harm." I'm having someone in my office check, if  
7 you'd just give me a couple more minutes.

8           **THE COURT:** I appreciate that, and the request. I'm  
9 familiar with that pattern instruction.

10           My view is that that language defining "substantial" does  
11 very little to nothing to define substantial; that the jurors,  
12 in their experience and education, will understand what  
13 "substantial" means, and don't need different words to mean the  
14 same thing to define it. So I have considered -- and have that  
15 pattern instruction before me -- whether it should give it.  
16 And, under the circumstances, I'm not going to give it.

17           A second reason not to give it now is it would draw more  
18 attention to that instruction. Even if I gave an instruction  
19 not to pay attention -- not to pay more attention that, I think  
20 it would draw a lot of attention that that's going to be the  
21 critical thing that the parties are going to be arguing about,  
22 is substantial or not substantial. And it's just not that -- I  
23 think there's more danger of confusion rather than clarity. So  
24 I'm not going give that additional instruction.

25           So, Barbara, if you can, make additional copies and then

1 bring in the jury, please. Thank you.

2 All right. So I will give them the revised Verdict Form  
3 first, and tell them why we changed it. And then we'll proceed  
4 to the closing arguments.

5 **MR. SIEGEL:** You're going to tell them it's my fault.

6 **THE COURT:** No, I'm not.

7 **MR. SIEGEL:** Okay.

8 **THE COURT:** No one's fault.

9 (Proceedings were heard in the presence of the jury:)

10 **THE COURT:** All right. Please be seated, everyone.

11 Ladies and gentlemen of the jury, during the lunch break  
12 we made some revisions to the Verdict Form. The old version of  
13 the Verdict Form has been removed. The revised version of the  
14 Verdict Form had been provided to you. There's no difference  
15 in the instruction of law that I gave to you. It applies  
16 equally to the Verdict Form. This Verdict Form tracks more  
17 precisely the language in the closing instructions. And to aid  
18 the jury in its deliberations, we wanted to make sure the  
19 language was precise from the instruction to the Verdict Form.  
20 So you should use in your deliberations the revised Verdict  
21 Form.

22 As I had promised, it's now the plaintiff's opportunity --  
23 Ms. Preston's opportunity -- to present her closing argument,  
24 followed by the Defense.

25 You may proceed.

1           **MR. SIEGEL:** Great. Thank you, Your Honor. And  
2 excuse me for turning my back to the Court.

3                           **CLOSING ARGUMENT**

4           **MR. SIEGEL:** Good afternoon, ladies and gentlemen.  
5 This is my opportunity to present an argument in favor of  
6 Ms. Preston. And, you know, before I start, I want to say  
7 something. Judge Cousins has instructed you that the  
8 attorneys' arguments are not evidence; questions, and so on.  
9 And, of course, I agree. It wouldn't matter if I disagree.

10           But my argument is a promise. And the opening statement I  
11 made when we started last week was also a promise. And,  
12 whether it's evidence or not, I expect you to hold me to what I  
13 say about the evidence, and what I said about the evidence  
14 before we began.

15           Next, please.

16 (Document displayed.)

17           **MR. SIEGEL:** Okay. So we've done a little PowerPoint  
18 here. And some of these things you already know.

19           Judge Cousins has given you the Jury Instructions. I'm  
20 going to comment on the Jury Instructions as I go forward, but  
21 of course, it's your responsibility to decide what the facts  
22 are, and to apply the Court's instructions to the facts.

23           Next, please.

24 (Document displayed.)

25           **MR. SIEGEL:** One of the fundamental issues in any

1 case is: What is the burden of proof? And again, you've had  
2 an instruction on that. It's our job to prove our case by  
3 what's called a "preponderance of the evidence," which means  
4 that we must prove that Ms. Preston's claim is more likely true  
5 than not.

6 And if you've sat through many jury trials, you've  
7 probably seen every lawyer give a little different illustration  
8 of what this point is, but I like to say imagine you have the  
9 scales of justice, and you put a ream -- 500 sheets -- of paper  
10 on each side, and it's still completely balanced. The person  
11 who has the burden of proof has to put one more sheet on the  
12 scale. That's a preponderance of the evidence.

13 And on one issue in this case, again, as the Court's  
14 instructed you, the burden is on the City of Oakland. If it  
15 contends that it would have made the same decisions -- that is,  
16 if it claims it would have fired her, regardless of her  
17 protected activities and regardless of whether those protected  
18 activities played a role -- it must prove that it would have  
19 made the same decision by clear and convincing evidence. And  
20 we can't quite quantify that. The instructions say they have  
21 to prove that it's pretty certain, rather than more certain.

22 I'm sure some of you have heard of the standard of proof  
23 beyond a reasonable doubt. Well, that's not criminal case.  
24 This is not a criminal case. And that's not what we have to  
25 prove.

1       So I want to turn, now, to discussing what I think we do  
2 have to prove. Again, this is a somewhat shortened version --

3       Next, please.

4 (Document displayed.)

5               **MR. SIEGEL:** -- of what the Court's instructions are.

6       So first off, we have to prove one of four protected acts.  
7 I believe we've proven all four; but in order to prevail, we  
8 have to prove one of these four. One, that she refused to  
9 include language in the proposed Rainbow Teen Center Report  
10 that she believed was racially discriminatory.

11       Or, two, she refused to confirm Ms. Santana's statement at  
12 the March 6th City Council meeting, because she believed doing  
13 so would be committing perjury.

14       Next, please.

15 (Document displayed.)

16               **MR. SIEGEL:** Or, three, she disclosed to Ms. Santana,  
17 City Attorney Parker, or Council Member Brooks that  
18 Fire Chief Reed was entering into agreements with the  
19 Firefighters Union without City Council approval, and that she  
20 made this disclosure because she believed that doing so would  
21 violate state law.

22       Or, four, that she disclosed the City's failure to collect  
23 union dues for TPT employees because, again, she believed that  
24 that failure also violated the law.

25       So we have to prove one of those four things.

1       Next, we also have to prove that Ms. Preston reasonably  
2 believed -- and I want to stress "reasonably believed." That's  
3 the standard. She doesn't have to prove that these actions  
4 actually did violate the law, but that she reasonably believed  
5 that they violated the law, or that she refused to engage in  
6 unlawful activities.

7       Then the next thing we have to prove is that Ms. Preston's  
8 disclosure or refusal to participate in unlawful activities was  
9 a contributing factor in the decision -- City's decision to  
10 fire her.

11       And again, Judge Cousins' instructions, which you have and  
12 which you read earlier -- we have to show that it was a  
13 contributing factor; not the only factor, not the key factor,  
14 but that it was a contributing factor. That's our burden.

15       And then, finally, that she suffered harm due to these  
16 things.

17       So just I want to go over the Verdict Form real quickly  
18 with you.

19       Put that on the Elmo.

20 (Document displayed.)

21       **MR. SIEGEL:** Okay. So this is the Verdict Form that  
22 you will have. And it pretty much tracks what I've just told  
23 you.

24       Question Number 1. Did she prove that she disclosed or  
25 refused to participate -- that she reasonably believed violated

1 a state or federal law?

2 Yes.

3 Did she prove that her disclosure or refusal to  
4 participate was a contributing factor?

5 Again, we think the evidence is yes.

6 Did she prove by a preponderance of the evidence that she  
7 was harmed?

8 Well, she was fired, so we think the answer to 3 is "Yes."

9 Did she prove by a preponderance of the evidence that  
10 Santana's conduct was a substantial factor in causing her harm?

11 I think that's kind of almost a repeat of Number 4; that  
12 it was Miss Santana who fired her, so thought it was  
13 Ms. Santana's conduct that caused her harm.

14 And, 5 -- this is where the City -- if they want to defend  
15 our claim, they must prove by clear and convincing evidence  
16 that it would have discharged her for legitimate independent  
17 reasons, absent her disclosure and/or refusal to participate.

18 We think the answer to that is "No."

19 And I'll speak more about those things and about the  
20 damages as I proceed; but before I go on I want to say to you  
21 that one of the things I would like you to consider is; whether  
22 the various explanations given by the City of Oakland are  
23 legitimate explanations -- they really do explain why they  
24 fired Ms. Preston -- or whether they are what we call  
25 "pretext." "Pretext" is not a word in these instructions, but

1 basically what that means is an excuse.

2 And, you know, in a case like this, where many of the  
3 issues are to be resolved by circumstantial evidence, you know,  
4 you're not going to get Ms. Santana or someone else standing up  
5 and saying, "Oh, we fired her because she's a whistleblower,"  
6 or something like that. So you have to look at the evidence  
7 which casts doubt on the City's explanations. And I would  
8 suggest to you that there are three things you might want to  
9 look the. Okay?

10 Number one was the timing of the termination. And by that  
11 I mean that the termination really was decided the day after  
12 she spoke to the City Council about the SEIU grievance on  
13 October 1.

14 Number two. I think you need to look at hostilities. Was  
15 there bad blood between Miss Santana and Ms. Preston that  
16 extended for some period of time? And then -- so whether that  
17 would cast doubt on the City's explanations.

18 And then the last thing which I want to address right now  
19 for a couple of minutes is that there are too many  
20 explanations. You know, when someone asks you, *Why did you do*  
21 *this? Why did you go out for a movie Friday night?* and the  
22 answers you get are -- well, there are five different answers,  
23 and they're one or the other or something else, and they're not  
24 consistent, well, then you might ask, *Are those answers*  
25 *pretextual? Does the fact that there were so many explanations*



1    *mean that none of them are true?*

2           And I would suggest to you that that is exactly what's  
3    occurred here. In fact, I would suggest to you that the City  
4    is continuing to manufacture justifications for Ms. Preston's  
5    termination every day in this trial. Every day we hear  
6    something new. This morning we heard, *Well, she didn't go to a*  
7    *meeting to discuss the budget.* First time we've heard that  
8    explanation, or whatever it is.

9           But let me go through some of the main ones, because I  
10   think -- I hope they're most important. So let's say: What  
11   did the City do when it first fired her?

12          It sent her a termination notice. Right?

13          And you would expect -- I mean, this is the City of  
14   Oakland. This isn't the city of two people who live out in the  
15   boonies somewhere. This is a City of 400,000 people. It has  
16   something that I think you probably heard of, called Personnel  
17   Action form, which is a form -- an official form in a personnel  
18   file -- that explains what it is that the City did. So here's  
19   what the City did when they fired Ms. Preston on October 3,  
20   2013.

21   (Document displayed.)

22                 **MR. SIEGEL:** They said -- and look at that box.  
23   You'll have this. This is Exhibit 44. And you'll have all of  
24   the exhibits when you go back to deliberate.

25          So there's a pretty simple looking check box there as to

1 the reasons why someone could be fired. And there are two main  
2 categories: Lack of Work, or Discharge.

3 And under "Discharge" you see things like insubordination,  
4 job performance, off-duty misconduct, violations of City rules.  
5 They did not check one of those. Right?

6 What they did check is, under the column "Lack of Work,"  
7 they said, "See attached." So let's see what the attached  
8 says. And again, this is part of Exhibit 44. This simply  
9 says, "This letter is to inform you that your services are no  
10 longer needed."

11 So when they fired Ms. Preston, that was their  
12 explanation; their sole explanation; nothing to do with  
13 misconduct.

14 And when Mayor Quan testified here last week, she  
15 basically repeated that. She said, *Well, Ms. Preston was not*  
16 *terminated for cause*. I was kind of surprised when she said  
17 that, but that's what she said. She says Ms. Preston was a  
18 temporary and probationary employee, who was let go when her  
19 work was completed.

20 So again we have the City, as of the moment when it fires  
21 her, saying that it's a not-for-cause termination.

22 And then you have Mayor Quan testifying almost two years  
23 later to the day, really -- or within a few weeks -- that she  
24 was a temporary employee, and that's why she was let go.

25 Well, 14 months later, they had a new reason. Okay?

1 And I read to you during Ms. Santana's testimony last week  
2 when she first testified what is called an "interrogatory  
3 response." And an interrogatory is a discovery vehicle. It  
4 not a deposition, but it's in the same category of things that  
5 we do before trial. We ask the other side to answer questions.  
6 And they have to answer them under oath. And that's because,  
7 as lawyers prepare a case for trial, we want to know what we're  
8 dealing with. We want to know if we have to overcome the  
9 City's defense. What is their defense?

10 So here's what they said. There it is (indicating).  
11 (Document displayed.)

12 **MR. SIEGEL:** This was 12/17/14, verified under oath  
13 by Ms. Santana. She swore that this was true. She swore that  
14 plaintiff was an at-will employee and, as such, could be  
15 terminated or could leave her employment for any reason or  
16 without any reason. Plaintiff disclosed confidential  
17 information inappropriately to third parties not authorized to  
18 receive it. Plaintiff failed to maintain a professional  
19 relationship with the City Administrator and failed to maintain  
20 professional relationships with her colleagues.

21 Now again I read it. She adopted it. This is what she  
22 said. This is what she swore to. Again, a little more than a  
23 year. And I ask you: Have they shown this in this courtroom?  
24 Have they shown that she disclosed confidential information?  
25 Have they put in front of you one item of confidential

1 information that she improperly disclosed?

2 And I think you should think about that. And I think the  
3 answer's pretty obviously "No."

4 And what makes that failure even more glaring, in my mind,  
5 is that they looked at her e-mail. I'll talk a little bit  
6 about that later, because I find that whole e-mail thing pretty  
7 appalling, but we'll talk about it.

8 But for purposes of this moment, when they say she  
9 disclosed confidential information, well, what was it? Was it  
10 when she spoke to Dwight McElroy and, according to Ms. Lara,  
11 gave him a piece of paper? No evidence that that was  
12 confidential information.

13 And what you've heard is that it's common -- this is why I  
14 asked the questions of so many of their witnesses -- to have  
15 sidebars during negotiations, where, instead of sitting at this  
16 table one or two people from each side go off into a room and  
17 see if they could work things out through negotiation. *Well,*  
18 *if you say this, we'll say that. If you say that, we'll say*  
19 *this.* And we'll talk more about that in a little bit.

20 But how about the October 2 explanation? This is the one  
21 in my mind. I mean this isn't, you know, one of those real  
22 sexy cases where we're going to find the smoking gun under the  
23 bed or something like that, but what -- this October 2  
24 explanation is something that is as close to a smoking gun as  
25 we can find in a case like this.

1        So Ms. Santana testified -- she said it in her deposition;  
2 I got her to repeat it on the stand -- the final straw was this  
3 meeting on October 2. I'm in my office with Ms. Parker and  
4 Mr. McGee. And Ms. Preston calls up, and was rude, and  
5 screamed at me about my transferring responsibility for the  
6 negotiation. And that was the final straw. So I typed up the  
7 notices, and they were served on her the next day.

8        Well, that might work, except -- and you know very well  
9 what the "except" is. Put yourself in that room for a second.  
10 You're there to discuss a grievance. You're there to discuss  
11 this SEIU grievance for not collecting the dues, with the  
12 person you've hired to investigate that grievance. And the  
13 person who you've removed from the investigation calls on the  
14 phone. And so you put her on the speaker phone.

15        Don't worry that you didn't tell her she's on a speaker  
16 phone. You put her on a speaker phone.

17        What does she do? She yells at me. She screams at me.  
18 She's rude and abusive to me because I removed her from the  
19 responsibility; but strange to be, none of the two people who  
20 were there -- the two attorneys, Ms. Parker or Mr. McGee --  
21 confirms it. The most they'll go is they'll say, *Well, I heard*  
22 *Ms. Preston talk in a loud voice.* That's as far as they'll go,  
23 but they won't confirm any conversation.

24        And you know, again, this doesn't make sense to me.

25        The three of them are sitting there, talking about this

1 SEIU grievance. Ms. Preston allegedly calls up to talk about  
2 the grievance and scream about it; and they don't remember one  
3 word she said.

4 Again, I think the only inference you can draw from that  
5 is that she didn't really say it. And I don't know if it's a  
6 major piece of evidence about it, but you know, when Ms. Lara  
7 was on the stand she testified, *Well, you know, I was with*  
8 *Ms. Preston on that day all day. We were negotiating that*  
9 *agreement with SEIU.*

10 Now, of course, I admit, you know, maybe they weren't  
11 together all day. Maybe Ms. Preston went to the bathroom, and  
12 after she went to the bathroom she went out in the hallway and  
13 called up, you know, Ms. Santana on the phone and screamed at  
14 her. That's possible, but is it likely? I would suggest to  
15 you that it's not, and that this is just a story that they made  
16 up to justify the termination.

17 So let's go to the next slide, please.  
18 (Document displayed.).

19 **MR. SIEGEL:** Obviously, one of the most important  
20 questions you will have to decide in this case is who's telling  
21 the truth. Right? Is it LaWanna Preston, or is it  
22 Ms. Santana?

23 And I know all of us have our principles for how we look  
24 at other people; how we evaluate them. I'll tell you one of my  
25 principles that -- you can agree or not about my principle --

1 is this. I don't think people change that much. You know. I  
2 don't think people go through life into their 40s or 50 years  
3 old -- they've been a good employee all their life. They've  
4 been successful. They've been ambitious. They've taken on  
5 jobs and been praised for their work, and get more  
6 responsibilities, and then all of a sudden, they become lousy  
7 employees. They become terrible employees. They become the  
8 kind of employee that you cannot stand to have around.

9 Now again, you may not agree with that perspective on  
10 human nature; but you have to ask yourself at least: Is  
11 LaWanna Preston the unprofessional, untrustworthy employee  
12 described by Deanna Santana and Scott Johnson, or --

13 And I've listed some things, but even before you get  
14 there -- right? -- you think of Ms. Preston's background.  
15 Okay? She grows up. Benicia. Martinez. Goes to high school.  
16 Gets a little bit of college. Can't afford to keep going.  
17 What does she do? She works at a store. Okay? Regular,  
18 hardworking, blue-collar person. Get a job, and you do the  
19 best you can.

20 Finds a job with the City of Berkeley; not a big, fancy  
21 job -- right? -- being a meter maid. And then she's promoted,  
22 so she's a Chief Meter Maid. And she does that for several  
23 years. And then she has an opportunity to go to work for SEIU.  
24 In the course of 17 years, she is promoted; advances through  
25 the ranks. And at the end of the day, she's in charge of the

1 whole San Francisco operation.

2 And then she says to herself, *Well, maybe I will change*  
3 *careers a little bit.* So she goes to work for the City of  
4 Oakland. She's hired by the City of Oakland. She's hired by  
5 the City of Oakland. And the City Administrator,  
6 Deborah Edgerly, says, *LaWanna, we have ourselves a mess here.*  
7 *We have guys drinking on the job. We have people not following*  
8 *the rules. We kind of have a chaotic situation here. And I*  
9 *need you to clean it up.* And she does. And she goes to work  
10 for the City in 2007.

11 Every year -- and this is, again, something to consider.  
12 I haven't quite figured out whether she had three City  
13 Administrators or four that she worked for before Ms. Santana;  
14 but what you do know is you haven't heard a bad word from any  
15 of them about her performance. Not one document saying that  
16 she had problems with one of those City Administrators.

17 Instead, you remember what I said last week. Oakland's a  
18 tough place to work. Well, think of what people said about  
19 Ms. Preston's work. And let's focus on the people who had no  
20 axe to grind. Right?

21 You heard Fred Blackwell testify. Fred Blackwell is now  
22 the head of the San Francisco Foundation. He was one of  
23 Ms. Santana's top two deputies -- right? -- along with  
24 Scott Johnson.

25 What did he say about Ms. Preston?



1       Credible, competent negotiator, who some unions said was  
2 too tough at the table.

3       What did Lamont Ewell say? We brought Lamont Ewell up.  
4 Lamont Ewell had been a City Administrator; a City Manager in  
5 San Diego; Durham, North Carolina; Santa Monica, California.  
6 Was Ms. Santana's mentor. Right? Not someone with an axe to  
7 grind against her. I would submit to you that Mr. Ewell was a  
8 very neutral, honest witness. What did he say?

9       He said she's very dedicated, very serious, honest,  
10 credible. A person with integrity. That's the way he  
11 described her.

12       And Sandre Swanson, who was the Deputy Mayor, came in and  
13 said she did a great job, and -- and she followed Ms. Santana's  
14 instructions.

15       So, you know, you have to start asking yourself: What's  
16 the true picture here? Is it the true picture of her that's  
17 painted by Mr. Johnson or Ms. Santana; or is it the true  
18 picture painted by these people who were neutral, and who came  
19 here simply because they wanted to tell the truth?

20       We move.

21       So you know, I said, *Does a leopard change their spots?*  
22 Right? I mean, that's really the question you have to ask  
23 yourself about Ms. Preston.

24       You know, six months or so after Ms. Santana arrives, she  
25 promotes Ms. Preston. She becomes a director. Instead of

1 being a manager reporting to the Human Resources Director, she  
2 becomes a director in her own right, and reports to  
3 Ms. Santana.

4 And then we had that conversation about the nonevaluation.  
5 And you know, the evaluation is not in evidence. Who did it.  
6 When it was done -- it's all too confusing. The Court did not  
7 allow it, which I respect; but you remember that I read a  
8 statement to Ms. Santana when she was on the stand.

9 And I said, *Would you have agreed with this statement back*  
10 *in 2012?*

11 And she said, *Yes, I would.*

12 So this is Ms. Santana's own words describing Ms. Preston  
13 as, quote, "a great asset to the City," who provided, quote,  
14 "needed leadership to Employee Relations and EOPD," and, quote,  
15 "established great working relationships with organized labor,  
16 and demonstrates a high level of professionalism and  
17 integrity." So Ms. Santana is forced to agree with Deputy  
18 Mayor Swanson, with former City Administrator Ewell, with  
19 Fred Blackwell about the qualities of Ms. Preston's work.

20 And the last thing I would like you to consider: If  
21 Ms. Preston was as poor an employee as some people have told  
22 you in this courtroom, do you think that City and County of  
23 San Francisco, ten weeks after she was fired by Oakland, hired  
24 her; and then within a year, promoted her into a job where she  
25 now works where she has five times as many union contracts and

1 eight times as many employees as she had to oversee in Oakland?  
2 Again, the picture is -- you heard her on the stand --  
3 intelligent, professional, dedicated, hardworking, careful  
4 person. She really was the sheriff who City Administrator  
5 Edgerly wanted to hire.

6 So let me move, then, to discuss a couple of these issues  
7 that involved her whistle blowing; but before I do that, let  
8 me -- I mentioned three things to talk about in terms of  
9 pretext. The inconsistent stories.

10 And how about policy? Reading Ms. Preston's e-mail  
11 without authorization or any good reason. And you can look at  
12 the policy. It's Exhibit Number 1. I just want to mention  
13 very briefly what it says, because I would urge you to treat  
14 the language as serious, not just as vague and uninformative.  
15 So the language says only agency department heads and the City  
16 Manager have authority to request access. It doesn't say the  
17 City Manager can just help herself, or anything like that. It  
18 says the City Manager has authority to request. And then, if  
19 you go over to the next page, it talks about that there will be  
20 a statement maintained by the Office of Information and  
21 Technology which will be a record of the request.

22 Now, not only is my explanation -- my discussion --  
23 consistent with the language. I would submit to you it's  
24 consistent. And the only way to have a policy that's  
25 consistent with common sense and our human sensitivities --

1 right? I mean, we live in a world where we've been told by  
2 Edward Snowden and others that our e-mails, our telephone  
3 calls, our daily travels around town are subject to being  
4 looked at by government agencies, and without our knowing it,  
5 without anybody's permission. And I don't know if you agree,  
6 but I find that horrifying. It's one thing to track people who  
7 are criminals or who have done something bad; but to just go  
8 around and vacuum up people's personal information is something  
9 I find offensive.

10 And I find it offensive when City Attorney of the City of  
11 Oakland says, *Well, that's fine*. She can just do what she  
12 wants. She doesn't need permission. And not only that, she  
13 doesn't even have to make a record of it. You would think at  
14 least you would have a record of it, so that at some point if  
15 there's a dispute about what the City did and why they did it,  
16 there would be some document somewhere that Ms. Santana signed  
17 and said, *On this date I ordered access to her e-mail*  
18 *because -- I don't know what -- I found she was looking at porn*  
19 *or her computer* or something like that. And there it is for  
20 anybody to see.

21 But no. No statement. So I don't believe it.

22 But certainly, as I said before, they did this. We don't  
23 know how long they did it, but we know one thing: They didn't  
24 find anything that was interesting enough to bring to your  
25 attention in this courtroom. And I think that's a point I

1 would urge to you consider.

2 And then secondly, they removed her from the TPT grievance  
3 investigation.

4 And you have to ask yourselves why.

5 Pretty clear that that was a big part of her job. Even  
6 Ms. Lara admitted that this morning. It was a big part of  
7 Ms. Preston's job to do these investigations. And they took  
8 her off it. And I'll mention the reason for that in a few  
9 minutes. And then she -- they fired her of the day after she  
10 disclosed the grievance to the City Council.

11 And, you -- you know, I would submit to you that one of  
12 the things that was going on here was that Deanna Santana found  
13 herself to be very embarrassed by what Ms. Preston was doing.  
14 Very embarrassed.

15 Ms. Preston refuses to go along with the language in the  
16 RTC Report. She contradicts Ms. Santana at the City Council  
17 meeting. And you'll see the tape in a minute. She points out  
18 that the Fire Chief, who was one of Ms. Santana's hires -- one  
19 of her colleagues from San Jose -- was violating the Charter.  
20 She points out that Ms. Kasaine is violating the law.

21 And then at the City Council meeting on October 1, where  
22 Ms. Santana told Ms. Preston, *Don't talk about the grievance*,  
23 and a Councilmember said, *What's this about a grievance?* and  
24 Ms. Preston told her, that was the last straw; not that  
25 make-believe conversation on October 2. Ms. Santana was

1 embarrassed because Ms. Preston was constantly pointing out to  
2 people that Ms. Santana was perhaps not doing everything she  
3 was supposed to do. And removing her from the TPT grievance  
4 investigation was a way to try to avoid more of that  
5 embarrassment.

6 So let me talk a little bit about the three specifics or  
7 the four specifics; first of all, on the RTC -- on the Rainbow  
8 Teen Center. And let me say, first of all, you know, talking  
9 about who has a horse in what race, we don't have a horse in  
10 the contest between Ms. Santana and Desley Brooks. We don't  
11 really care, to be honest with you, whose side you're on about  
12 that; whose side anybody's on.

13 In fact, that was LaWanna Preston's complete approach to  
14 that issue. She wasn't on anybody's side, but I -- first thing  
15 I want to show you about this is that Ms. Santana, despite  
16 denying it, was looking for a way to turn that report into an  
17 investigation.

18 And how do we know that?

19 We know that because on February 20, she asked Ms. Parker,  
20 *Do I have the authority to initiate an investigation of a*  
21 *Councilmember?*

22 Now, please look. This is Exhibit 7. It's in evidence.  
23 She began the process. And again ask yourselves the question:  
24 Unless I was interested in initiating an investigation, why  
25 would I ask the City Attorney if I had the power to? There are

1 a lot of things she could have asked. Do I have the power to  
2 put the City on a four-day week? Do I have the power to, you  
3 know, declare Tuesday a new City holiday?

4 She asked her, *Do I have the power to initiate the*  
5 *investigation?*

6 And Ms. Parker's response was, *You do. You do.*

7 And if you look at Ms. Parker's note on -- what is it? --  
8 page 16 of Exhibit 6, which is the -- one of the drafts,  
9 Ms. Parker goes on at considerable length to explain what power  
10 Ms. Santana had to start an investigation of Desley Brooks.

11 Now, you know, again, regardless of which side you were  
12 on, you could tell from Ms. Brooks' testimony Ms. Santana's  
13 testimony that there's not a lot of love lost between the two  
14 of them. And so it's not hard to imagine that Ms. Santana was  
15 looking at Ms. Brooks as someone who might be better off being  
16 a City Councilmember in Berkeley or someplace else, rather than  
17 Oakland. And so that's what she wanted to do.

18 Ms. Preston says, *No, I'm not -- I'm not having that.*  
19 *It's not the job of staff to initiate investigations of*  
20 *Councilmembers, and I think it's racially discriminatory.* But  
21 again, unless you think that Ms. Preston was taking sides in  
22 this dispute, look at the final report, itself. In that report  
23 you'll see many criticisms of Councilmember Brooks' behavior.  
24 And, as you heard from everyone, it was Ms. Preston's job to do  
25 the part of the report that dealt with the hiring at the

1 Rainbow Teen Center. So the report's full of that -- problems  
2 with the hiring -- written by Ms. Preston. She didn't have a  
3 horse in the race, either. She's trying to be straight,  
4 straight arrow, right down the middle. She didn't take sides.

5 And then we have the March 6th City Council meeting,  
6 and -- where Ms. Preston declined to support Ms. Santana's  
7 statements. So we'll go on TV for a second. And you'll have  
8 this, by the way. You can run it back, run it forward. Slow  
9 it down as much as you want, because it's fast and furious.  
10 (Videotape was played but not reported.)

11 **MR. SIEGEL:** Okay. So just I want to stop it,  
12 because to me, that's the key transaction there.  
13 Ms. Santana -- you see her there, saying part of what we had  
14 discussed with Ms. Brooks was that there would be one site  
15 director for two sites. And Ms. Brooks breaks in and says, *No,*  
16 *we didn't discuss that.* Right? So that's the disagreement  
17 between the two of them.

18 Go ahead.

19 (Videotape resumed.)

20 **MR. SIEGEL:** Okay. You can see there's a dispute  
21 between the two of them. And you know what was going on was  
22 slightly confusing -- right? -- because they were talking about  
23 the staffing ratio for the Rainbow Teen Center, and the issue  
24 of the director.

25 And it appears that Ms. Santana was saying that we



1 discussed both of those in the room with Ms. Brooks. And when  
2 Ms. Preston gets up, she says, *No. We talked about the*  
3 *staffing scenario, but we didn't discuss the two-director*  
4 *situation.*

5 And that was that. You know?

6 But later that evening, as you saw -- and I'm sure we'll  
7 hear -- Ms. Preston e-mails Ms. Brooks; apologizes for  
8 contradicting her. Ms. Brooks -- excuse me -- e-mails  
9 Ms. Santana; apologizes for contradicting her. And Ms. Santana  
10 e-mails back claims you didn't contradict me. But you know  
11 that's kind of a pattern. I have to say.

12 It's like when the issue of the firefighters contract  
13 arose. And Ms. Preston complains about that. Ms. Santana  
14 says, *Well, I agreed with you all of the time.* But we'll see.  
15 Right? So that's the RTC thing. I think it's clear that very  
16 least that's proven is that Ms. Preston essentially defied her  
17 boss in public in front of a large, rowdy meeting of Oakland  
18 residents.

19 Then the issue of the unauthorized bargaining -- I guess I  
20 think this is the clearest one of the three. We've got a City  
21 policy -- no one's contradicting it -- that you need Council  
22 approval before negotiations. Agreements made without approval  
23 may violate state law. That's what Ms. Preston told you the  
24 other day.

25 And the rationale for that -- okay? -- is this. When

1 people sit down at a bargaining table and reach an agreement,  
2 each side has a right to assume that they have a deal. You  
3 make a deal with someone, you assume that the person sitting  
4 across the table from you has the authority. If that person is  
5 selling you a car and you buy that car, you have a right to  
6 assume that he owns the car. Otherwise, he wouldn't be selling  
7 it to you.

8 If you have people at the negotiating table making deals  
9 with unions that they don't have the authority to make, the  
10 union's going to be unhappy. And you heard they were unhappy.

11 Chief Reed had to clean that particular mess up. And they  
12 were unhappy with her. They were unhappy with Ms. Preston.  
13 They were unhappy because the City negotiators made a deal  
14 without that authority; and it's also a violation, as  
15 Ms. Preston said, of state law; of the Meyers-Miliias-Brown Act,  
16 which essentially confirms what I just mentioned.

17 Now we know that Ms. Preston disclosed that improper  
18 bargaining, because she wrote this e-mail, which is Exhibit 20,  
19 which is in evidence, where she discloses the bargaining to  
20 City Attorney and to Councilmember Brooks.

21 And you may ask, *Why did she do that?*

22 Well, she did it because another exhibit, which explains  
23 why, which is Exhibit 18, where Ms. Santana's says, *What's the*  
24 *legal question to answer? Teresa had no authority to sign the*  
25 *extension.*

1        So Ms. Santana's contribution of to interchange is to say,  
2        *Well, Ms. Preston was right;* but that was her position after  
3        the fact, once it became embarrassing.

4        And really what she did is that she threw the Chief under  
5        the bus. Right? You heard Chief Reed. There's all this  
6        confusion. Right? There's a lot of confusion in this case  
7        from the City. What really happened?

8        Well, you heard what Chief Reed setted. What Chief Reed  
9        said is that Trinette, who worked for the Fire Department in a  
10       labor-relations capacity, told the Chief that everything was  
11       set. They had approval. They had agreement to do it.

12       And even more so, Chief Reed testified that in her  
13       conversations with City Administrator Santana, City  
14       Administrator Santana said, *Oh, yeah. Go and talk to Local 55.*  
15       *Let's try and get this thing resolved.*

16       When everything falls apart, when all heck breaks loose,  
17       Ms. Santana says to Chief Reed, *No. I didn't tell you you*  
18       *could negotiate. It must be LaWanna's fault, or it must be*  
19       *Winnie Anderson's fault, or it must be somebody else's fault.*  
20       *It's not my fault.* But again, whatever you think of  
21       Chief Reed, she had no reason to make this up. She had no  
22       reason to go to the table and negotiate with Local 55, except  
23       that her boss told her that everything was okay number the  
24       problem developed.

25       And then there's the union-dues issue. Move on to that.

1 Okay. So I guess one factual question you'll have to decide  
2 when you begin to negotiate is: Did Katano Kasaine go into  
3 this meeting on August 6th and say, *I have not been collecting*  
4 *the dues for the part-time employees, because if I did, my*  
5 *phone would ring off the hook?*

6 Yeah. What's the evidence on that?

7 Well, two union reps who are in the room -- Joe Keffer,  
8 whose deposition we read; and Dwight McElroy -- both said  
9 that's what she said. Winnie Anderson, the City side of the  
10 negotiations, said that Ms. Kasaine said that. And even  
11 Ms. Lara, although she kind of tried to duck it on Friday,  
12 admitted this morning that that's exactly what Katano Kasaine  
13 meant.

14 And, just in case there's any doubt about it, please look  
15 at Exhibit 29. Okay? Exhibit 29 is, I think, an important  
16 exhibit. And it's the e-mail that Winnie Anderson wrote to  
17 Ms. Kasaine immediately after they had this meeting. And she  
18 writes, "Throughout the course of bargaining, the union has  
19 raised the issue that dues had not been taken out of TPT  
20 employee paychecks. You did confirm that dues had not been  
21 taken, and that you will be taking action in deducting dues  
22 from paychecks of TPT" -- whatever it is -- "Local 1021  
23 employees."

24 Now again, you put yourselves there. You've been in a  
25 negotiation. One of the people on your side -- right? -- not

1 opposing side -- after the negotiations says, *Look. You said*  
2 *this. What's the problem?*

3 And you think to yourself, *I didn't really say that. I*  
4 *don't agree. Winnie Anderson's wrong.*

5 What's the first thing you do?

6 You send an e-mail back. *Dear Winnie, You got that wrong.*  
7 *I never said that during the negotiations.* And you try to  
8 resolve it.

9 What's her excuse? Here we are, two-years-plus later.  
10 *Oh, I had too many e-mails that day. I never got to that one.*  
11 Right? I mean, she's got all of the e-mails from Ms. Santana.  
12 Ms. Preston. Somehow she gets all of the other e-mails. This  
13 one just fell through a crack in the floor or something, and  
14 she didn't respond to it.

15 Well, you know, I'm sorry. Ms. Kasaine is just not  
16 telling the truth. And for her to sit here and insist, in the  
17 face of all of this evidence to the contrary, that she never  
18 said what everybody else said she said is, to my mind, pretty  
19 absurd. Pretty absurd.

20 And, you know, one of the Judge's instructions has to do  
21 with the fact that if you think that a witness has lied to you,  
22 well, you may have to take that into account when you evaluate  
23 the rest of the testimony of that witness.

24 Now, what did Ms. Preston try to do? She heard about the  
25 problem from Winnie Anderson, Sonia Lara, and tries to fix it.

1 And what does she do? Contacts Ms. Kasaine and says, *I want to*  
2 *talk to you.*

3 And what's Ms. Kasaine say? *Oh, I don't want to talk to*  
4 *you. Why do we have to talk? I'm too busy.* All of these  
5 excuses and, you know, come up with different reasons why she  
6 wouldn't talk.

7 Was she afraid of Ms. Preston? Was she worried that  
8 Ms. Preston would twist her words? I asked her that. You  
9 know, she said, *I'm not afraid of Ms. Preston. This was not*  
10 *something where I felt personally threatened.*

11 It's something. And Ms. Lara confirmed that when I asked  
12 her the same question. It's something you can figure out just  
13 by looking at the payroll records. This wasn't witch hunt  
14 directed at Ms. Kasaine or anyone else. It was problem that  
15 the City has to face.

16 You look at the payroll records. You run a report that  
17 says -- okay -- for each SEIU 2021 represented employee, what  
18 union dues were collected from them? Were there periods of  
19 time when they worked when there were no dues collected?  
20 That's all there was to it. It wasn't a threat to Ms. Kasaine.

21 But you know this became, again, a problem -- a legal  
22 problem -- because, as Ms. Preston testified,  
23 Meyers-Miliias-Brown Act requires that if you have a contract  
24 with a union and the contract says, "Collect union dues," if  
25 you don't collect the union dues, it's an unfair labor practice

1 and a violation. So -- and it was an embarrassment at the  
2 October 1, City Council meeting when Desley Brooks asked about  
3 it. And Ms. Preston, as she said, had to tell the truth,  
4 because that's the way she conducts business.

5 So the firing was not justified by the City of Oakland.  
6 It wasn't a no-cause or at-will firing. There is no evidence  
7 that justifies what they wrote in response to interrogatory in  
8 December 2014. No disclosure of confidential information.

9 And then the last point I want to bring up on this is the  
10 issue of unprofessional. You know, that's one of those  
11 charges. Anybody could say, *Well, you know, Dan Siegel's*  
12 *unprofessional.*

13 *Well, why do you say that?*

14 *Well, someone told me he was unprofessional.*

15 *Well, who is that person?*

16 *I don't remember.*

17 So what I did is I made a list of all of the people who  
18 testified in this trial who were City of Oakland employees who  
19 actually had experience with LaWanna Preston. And I want you  
20 to see whether anything that any of these people said suggested  
21 that she was unprofessional.

22 Winnie Anderson didn't say she was unprofessional.

23 Fred Blackwell said she was real professional.

24 T.C. Everett, the IT person -- she said she got along with  
25 Ms. Preston well.

1 Lamont Ewell negotiated with her; said she was  
2 professional, and a person of integrity.

3 You know, even Scott Johnson -- right? So they bring in  
4 Scott Johnson on Friday. And Scott Johnson sits up on the  
5 stand and says, *Well, she was a bully. People were afraid of*  
6 *her. People said she was unprofessional. People said she*  
7 *mistreated her.*

8 I asked him, *Tell me one person. Give me an example of*  
9 *what person.*

10 You know, Johnson didn't say that Ms. Preston was  
11 unprofessional to him. He said that these unnamed people --

12 Well, who were they? They weren't in this list. Who were  
13 the people who thought she was unprofessional that justified  
14 her hiring?

15 And I have not really come up with anything.

16 They brought in Ms. Santana's friend, former Chief Jordan.

17 They brought in Kasaine, who said she wasn't afraid of  
18 Ms. Preston, who said she had no complaints.

19 Same with Ms. Lara, who testified this morning.

20 Ms. Preston treated her well; helped her get a raise; helped  
21 her get a transfer. She cried when Ms. Preston was fired.

22 Mr. McGee testified briefly. Ms. Parker testified.  
23 Neither of them said that Ms. Preston was unprofessional.

24 Teresa Reed -- despite the fact that she was criticized by  
25 Ms. Preston for improper negotiations, she had no problem with



1 Ms. Preston. I asked her, *Did you report Ms. Preston to City*  
2 *Administrator Santana because of anything?*

3 No. I have no complaints against her.

4 So who? Who?

5 So all right. We're winding up here.

6 No. There we go.

7 (Document displayed.)

8 **MR. SIEGEL:** A red herring is a smelly fish. This is  
9 something I learned quite a while ago. You know, many of us  
10 use the expression "red herring," but perhaps everyone who uses  
11 the expression knows where the expression comes from. Where  
12 the expression comes from is really tracking fugitive slaves,  
13 where people with dogs would go out after slaves in the swamps,  
14 and so on. So some of the fugitives learned that you could  
15 distract the dogs with a dead fish; and you carried the dead  
16 fish. And at certain point you run one way, and throw the dead  
17 fish in the other way. And you hope the dog goes after the  
18 fish instead of you.

19 That's what a red herring is. It's a way to distract  
20 attention. So we've had a lot of that. We've had the  
21 allegation that Ms. Preston couldn't investigate the SEIU  
22 grievance, because there was bad blood between her and Kasaine.

23 Well, there's no evidence of bad blood. There's some  
24 professional disagreements.

25 Anyway, as I said a minute ago, it didn't have to do with

1 Kasaine. It had simply to do with looking at the payroll  
2 records. Ms. Preston helped the unions undermine the City.

3 Now, yeah, even in this world, you can't have it both  
4 ways. Either Mr. Preston was such a tough negotiator, that the  
5 union people were angry at her and went into Mr. Johnson's  
6 office to complain about her; or she was giving away the store  
7 out the back door. Doesn't make sense that she would do both.

8 Did she undermine the Deb Grant inquiry?

9 Finally we got Ms. Santana to admit that even though she  
10 had the Police Department investigate this issue, the police  
11 came back and said Ms. Preston did not undermine any  
12 investigation. She was credible. Deb Grant was credible.  
13 Deb Grant was not punished. She wasn't punished. No  
14 documentation. I pointed that out before.

15 You know, again, if we're talking about the corner grocery  
16 store, maybe there's no personnel records. If you work for the  
17 City of Oakland, with thousands of employees, or any other  
18 city, there are personnel records. And every manager who is  
19 beyond kindergarten knows that if you have problems with an  
20 employee, you document it. You document it. You document it.  
21 You create a paper trail, so if it comes time to fire, you've  
22 got the documentation.

23 The June 26th grievance. June 26th SEIU grievance was  
24 dead, because it wasn't pursued. I don't know what the  
25 importance of that is. Maybe we'll hear it in a little

1 while -- whether it was Chief Reed or Trinette who asked  
2 Winnie Anderson to sign the deal. Big deal. Big deal.

3 Winnie Anderson signed it. Ms. Preston didn't want it  
4 signed. She made it clear after the fact she didn't want it  
5 signed.

6 So we think we've proven that Ms. Preston's whistleblowing  
7 activities was a contributing cause. We think we've proven  
8 that the City of Oakland's explanations don't hold water. And  
9 we think Ms. Preston is entitled to damages.

10 And go through them quickly. Dr. Ogus pointed out that  
11 the difference between what she would have earned had she  
12 stayed in Oakland and what she actually earned up until April  
13 of this year was 92,000.

14 Look at the future -- the present value of future losses;  
15 again, comparing Oakland employment to San Francisco  
16 employment. It's 252 and change.

17 And the pension losses. 409,000 after you deduct the  
18 80,000 or so she cashed out when she quit. She withdrew her  
19 contribution. Now it's interesting if you look at the next  
20 slide. Before we do that --

21 You're too quick for me.

22 **MS. MEHTA:** (Indicating.)

23 **MR. SIEGEL:** I know. I see.

24 The total is 754. Okay. Now I'm going to go to the next  
25 slide.

1 Mr. Cohen says, *No, it's not 754. It's only 154.* And the  
2 reason for that is that City of Oakland should get a credit,  
3 because Ms. Preston got this pension from PERS. So that should  
4 be a credit in terms of how much they owe.

5 In other words, there's a big problem with that, of  
6 course, which is that she didn't get the pension from PERS.  
7 When she was fired, number one, she needed the money. So she  
8 cashed out her 80 grand.

9 And maybe in a financially smarter place or in a  
10 financially smarter world she would have said, *Well, I'll just*  
11 *let that 80,000 sit; and instead I'll get my pension.* 25,00 a  
12 year next year and the year after.

13 She didn't do it because she needed the money then. And  
14 that's not her fault. And the City should not get credit for a  
15 pension she never received, when she didn't have the  
16 opportunity to earn that pension because they fired her?

17 So, you know, the Court's instructions don't ask you to  
18 think hypothetically about what she might have done.

19 Sure, she might have left the City of Oakland, and gone to  
20 work for a Wall Street bank, and made half a million dollars a  
21 year; and then City of Oakland would be asking her for money.  
22 But she didn't. She did the best she could with her kid in  
23 high school; her house and other expenses. She cashed out her  
24 pension. And so you don't get to subtract it.

25 And if you look at these numbers, what Mr. Cohen did is he

1 gave Oakland credit for 54,620 in past losses, and 500,000 in  
2 future losses. If you don't give Oakland the credit for those  
3 two numbers, then his number is 709,604, which is really very  
4 close to this -- Dr. Ogus' numbers.

5 And I'm not even going to argue with you about the other  
6 assumptions he made. She was going to retire at age 61. I  
7 mean, I wish I was on that retirement track. I would retire.  
8 I will tell you that it would have been a few years ago; but  
9 here where she's at, and she's continuing to work, and plans to  
10 continue to work.

11 And then finally, general damages. This is the other  
12 item. And, as Judge Cousins indicated, this number's in your  
13 discretion. There's no fixed standard. It's up to you. Come  
14 up with a fair number.

15 Please consider the following, though. Her history and  
16 the achievements of her life. The pride she obviously had,  
17 still has in her work. Her reputation. A lack warning. Just  
18 being kicked out. No notice. The humiliation of coming to  
19 work one day, and finding a security guard outside your office,  
20 and not letting you go in there even to pick up your children's  
21 photos. And the distress.

22 You know, I want to say this. When Ms. Preston was fired  
23 on October 3, 2003 [sic], she had no way of knowing how things  
24 would work out. Right? She had no way. She could have been  
25 unemployed now. Right? And so that's why she had to cash out

1 her \$80,000 and do what she did.

2 But as I said earlier, it's simply a reflection of her own  
3 qualities as a human being and as an employee -- a competent,  
4 professional labor-relations professional -- that she got the  
5 job in City and County of San Francisco. So that obviously  
6 mitigates her distress. We'd be in a different situation if we  
7 came in here today and Ms. Preston was living in her car or  
8 something like that; but the stress that she suffered on  
9 October 3, until things started to look better a few months  
10 later -- it's something that I urge you to compensate her for.

11 Thank you.

12 **THE COURT:** All right. Thank you.

13 We're going to take a five-minute recess, along with a  
14 stretch. And it will be the Defense opportunity for a closing  
15 statement -- closing argument when we return. Thank you.

16 (Recess taken from 2:23 p.m. until 2:31 p.m.)

17 **THE COURT:** Please be seated, ladies and gentlemen.

18 Now the City of Oakland's opportunity for closing  
19 argument.

20 (Proceedings were heard in the presence of the jury:)

21 **CLOSING ARGUMENT**

22 **MR. LAFAYETTE:** Good afternoon. You would think,  
23 based upon what I just heard from Ms. Preston's counsel, that  
24 it is the City of Oakland that has the burden in this case.  
25 You would think that we lived in a country where you could get

1 sued, and unless you came up with an explanation for something,  
2 you would be held liable. The whole concept of *You made the*  
3 *allegation; you prove it*, seemed to have been completely lost  
4 in the closing that I just heard. There was nothing there that  
5 said, *The plaintiff has the burden of proving this, this, this,*  
6 *this, and this*, and that she had presented evidence to meet  
7 that.

8 And instead what I think I heard was if the City of  
9 Oakland can't justify its termination, it's automatically  
10 liable. End of story. Go home.

11 That's not the way the law works. That's not the way the  
12 law in this country has ever worked.

13 The plaintiff sues. The plaintiff has an obligation and a  
14 responsibility to present evidence to show and meet each and  
15 every one of the elements assigned to her; and if she doesn't,  
16 case is over.

17 This is the instruction that the Court read to you. The  
18 burden of proof. Proof by a preponderance of the evidence  
19 means proof that something is more likely than not. It means  
20 that certain evidence, when compared to the evidence opposed to  
21 it, has the more convincing force, and makes you believe that  
22 something is more likely true than not. If the evidence on any  
23 particular point is evenly balanced, the party having the  
24 burden of proof has not proved that point by a preponderance of  
25 the evidence, and you must find against the party on that

1 point.

2 What does that mean?

3 That means that, quite frankly, the City could just sit  
4 there and do nothing. And it has no obligation to do anything  
5 until and unless the plaintiff has actually established those  
6 facts necessary to meet the elements that I am going to talk  
7 about today that are being assigned to the plaintiff to meet.

8 That's the way our judicial system works.

9 So what plaintiff spent the entire time talking about,  
10 *Well, I don't think that there is enough evidence of this, or*  
11 *At different points in time someone, or --*

12 But basically to criticize whether or not all of these  
13 reasons for termination were rolled up into one item or not,  
14 but not to talk about whether or not the plaintiff has actually  
15 met her burden.

16 Let us not be confused. Let us not be misdirected. Let  
17 us stay completely and totally on point as we go through this  
18 process.

19 So let me talk about where we start. We start here. Was  
20 there a reason to fire her?

21 Yeah. You say, first of all, she was at will.

22 And though this second question here -- progressive  
23 discipline was not required -- you may remember that that was  
24 something ambiguous; and it was ambiguity created by the  
25 plaintiff in this case. When I asked under cross-examination



1 about whether or not progressive discipline applied, she said  
2 something to the effect of, *Well, it's what we normally do*, or  
3 something.

4 And then only when you, the jury, asked a question -- a  
5 point-blank question -- Were you subject to progressive  
6 discipline? -- did we get a clean, clear answer. And the  
7 clean, clear answer was, *No, not in my level*. And, you see,  
8 that's because people at the level we're talking about are not  
9 the machinists. They're not the mechanics. They're not the  
10 secretaries. They're not the people who don't make these  
11 decisions.

12 This person's position was an important position to the  
13 City. And it was important to have someone in that position  
14 who would not abuse nor give the appearance of abusing the  
15 position of power that was associated with that position. It  
16 is a powerful position when you say that you can conduct  
17 investigations of someone. That is a level of power that  
18 should be wielded with the most delicate touch in hand; because  
19 otherwise, it gives you the power to intimidate. That's not  
20 appropriate. That's not appropriate.

21 Just cause?

22 No, we don't need it. The City didn't need anything. She  
23 was an at-will employee, and she's admitted it. That meant she  
24 could be fired for any reason, or no reason at all, with or  
25 without notice. That's what the law says. That's what she

1 said she understood at every step of the way.

2 So what is it that she has to prove?

3 This is what she has to prove. And there are four things  
4 that she has to prove; one of these four.

5 And let's talk about that for a second. Over and almost  
6 two-year period of time she's worked with Ms. Santana. At no  
7 point in time did you ever hear her make a complaint. You  
8 didn't hear her come up and say, *I complained to somebody that*  
9 *I was being treated poorly. I complained to someone that -- no*  
10 *-- that Ms. Santana is doing something to me inappropriately.*  
11 Where was that testimony? I didn't hear it. I didn't hear her  
12 say anything at any point or any way where she wrote a  
13 memorandum saying, *I think someone's trying to fire me.* I  
14 didn't hear that. I didn't hear her write a memorandum or see  
15 her write an memorandum or e-mail or anything that suggested  
16 anything of the sort, but this is where we are.

17 So what happens?

18 She gets fired for legitimate reasons. Period.

19 And then so what did she do?

20 She reaches back through her time, and she grabs  
21 everything that she could put her hands on, and throws it up  
22 against the wall and says, *One of these just might stick. One*  
23 *of these, someone just might say, "I will run with that one."*  
24 *And I will take it. And they will give me three quarters of a*  
25 *million dollars. Bam!*

1       That's what happens here.

2       You see, you didn't hear her reach out back in 2012 or  
3 2013. No.

4       This is, *I got fired, so now I'm going to reach back and*  
5 *grab everything that's ever happened. I'm going to throw it up*  
6 *on the wall and see if it sticks.*

7       And I'm going to walk us through each and every one of  
8 these items, to make sure that each and every one of us clearly  
9 sees that she has not met her burden with regard to either one  
10 of these items. So let's look at them.

11       Preston claims that she refused to add language to the  
12 Rainbow Teen Center Report referring Desley Brooks for  
13 prosecution, because she believed that doing so would be  
14 illegal racial discrimination. We are talking about that in  
15 detail.

16       Preston claims that she refused to confirm Santana's  
17 statement to City Council Brooks' -- Desley Brooks -- at the  
18 March 6th, 2012, City Council meeting, because she believed  
19 that doing so would be committing perjury.

20       Did anybody hear or see her being sworn and placed under  
21 penalty of perjury? Because I didn't hear it, and I didn't see  
22 it. But we're going to talk in more detailed specifics about  
23 that, too.

24       Three. Preston claims that she disclosed that the City of  
25 Oakland was entering into contracts with Firefighters' Local 55

1 without the necessary approval forms from City Council, because  
2 she believed that doing so would be a violation of the  
3 California Government Code. We're going to speak more  
4 specifically about that, but I want you to remember the context  
5 of that, because you see the context of that is a failure of  
6 her department. And the context of that is what she really  
7 attempted to do was take the failure of her department, and  
8 place it on someone else.

9 And we know that because of what Winnie Anderson testified  
10 to reluctantly. Winnie Anderson sat in that chair in this room  
11 and she said, *At each step of the way when I was dealing with*  
12 *the Fire Department, I was communicating with Ms. Preston.* She  
13 says Ms. Preston may not have actually seen the Tentative  
14 Agreement, but she knew about it. And she knew it was going to  
15 get signed. That's what she knew.

16 And then we're going to talk about the misrepresentation  
17 Ms. Preston make when she communicates to Desley Brooks. We're  
18 going to talk about all of it.

19 We get to this fourth one. Preston claims that she  
20 disclosed that the City of Oakland was failing to collect  
21 Temporary Part Time employees' union dues, because she believed  
22 that the failure was a violation of the California Government  
23 Code.

24 Not true, either. I mean, the simple explanation is; when  
25 the union sent the grievance over -- I mean, you look at the

1 document. They didn't just send it to her. They sent it to  
2 Deanna Santana, too. They sent it to the Mayor. So where is  
3 it that she brought it to someone's attention? It was already  
4 at everybody's attention. She didn't do that.

5 But we're going to go through: What does she have to  
6 prove in order to meet each one of these elements?

7 You see, this is the Court's instruction to you, as well.

8 Preston claims that Santana, acting on behalf of the City  
9 of Oakland, terminated Preston in retaliation for her  
10 disclosure of information and refusal to participate in  
11 unlawful acts. In order to establish this claim, Preston must  
12 prove all of the following, and she must prove each and every  
13 one of these items for each and every one of those claims by a  
14 preponderance of the evidence. And you're never going to see  
15 on that list that the City has a burden there.

16 Take a look at it. What's the first one? That the City  
17 was -- City of Oakland was Preston's employer. That's a  
18 no-brainer. It was.

19 That Santana, acting on behalf of the City of Oakland,  
20 believed that Preston disclosed information or refused to  
21 participate in acts. I'm going to go through each one of  
22 those, and you're going to see that that's absolutely not been  
23 proven.

24 That Preston had reasonable cause to believe or violations  
25 of or noncompliance with the law, but not just any law. The

1 Court's instructed you. It has to be a violation of federal  
2 law or a violation of state law. It cannot be a violation of a  
3 city ordinance, a city resolution, or a city anything. It has  
4 to be a violation of a federal or a state law. Period. End of  
5 question. And I'm going to tell you we're not going to find  
6 that in this record.

7 That Preston --

8 That Santana, acting on behalf of the City, terminated  
9 Preston. Well, okay. She did.

10 But here's the next one: That Preston's disclosure of  
11 information and/or refusal to participate in these activities  
12 was a contributing factor in City of Oakland's decision to  
13 discharge Preston.

14 Well, where is that evidence? I didn't hear it. I didn't  
15 hear a single soul come into this courtroom and say they heard,  
16 they saw, they suggested, they believed that Ms. Santana was  
17 doing something because of one of those four elements. Where  
18 is the evidence? You always have to ask yourself: Where is  
19 the evidence that supports that? There isn't any.

20 That Preston was harmed.

21 That Preston's disclosure of information -- refusal to  
22 participate in these -- was a contributing factor.

23 No. No evidence.

24 That Preston was harmed.

25 Well, okay. She lost her job, but not because of those

1 other items.

2 That Santana's conduct, acting on behalf of the City, was  
3 a substantial factor in causing Preston's harm. She fired her,  
4 but that's not the issue.

5 Preston must have reasonably believed that City of  
6 Oakland's policies violated federal or state rules or  
7 regulations; not city. And when we go through this, we're  
8 going to see the significance of that phrase, "not city."  
9 Okay?

10 So now let's go to the first of these: California Labor  
11 Code. I've already talked to you about the burden of proof.  
12 You're supposed to treat the City fairly.

13 So let's go to this Rainbow Teen Center Report. So what  
14 is it that she has to prove with regard to the Rainbow Teen  
15 Center Report? Each and every one of those elements. Each and  
16 every one of those. You can't skate. You can't slide. You've  
17 got to cover each and every one of those.

18 So let's talk about it.

19 No evidence this ever occurred.

20 No evidence Santana believed Preston was refusing to  
21 participate in an act made unlawful by state or federal law.  
22 No evidence that Preston even believed a violation of law was  
23 taking place of a federal or state nature.

24 No evidence Santana terminated her because of this.

25 And let's talk about the detailed specifics of this.

1 First of all, let's go back.

2 What was it that Fred Blackwell said? You see, madam  
3 court reporter here has been gracious enough to create a  
4 transcript. You should rely upon your own memory, but I'll  
5 tell you what it was that she caught that Fred Blackwell said  
6 about this whole incident. This is examination from  
7 plaintiff's counsel.

8 "Question: Mr. Lafayette asked you where Ms. Santana had  
9 wanted to put language in the Rainbow Teen Center Report  
10 regarding potential referring Ms. Brooks to the District  
11 Attorney. And your recollection was that Ms. Santana did not.  
12 Is that right?"

13 "Answer: That's correct."

14 I'm sorry. I thought he just said that Ms. Preston --  
15 Mr. Blackwell was a credible witness. He was. And  
16 Mr. Blackwell has just said there is no evidence whatsoever  
17 that Ms. Santana suggested that such language be placed in that  
18 report. So where is this coming from?

19 Do you recall --

20 So having said that, where is the testimony? Maybe it's  
21 here.

22 "Question: Now I'll try and get my language right here.  
23 Okay? Did Ms. Santana ever suggest to you that you could -- a  
24 suggestion of criminal charges in a final report?"

25 "Answer: No."



1 "Did she ever draft language suggesting criminal charges  
2 in the final report?"

3 "Answer: No."

4 "Did she ever insert language into the draft report  
5 stating that this matter should be referred to the DA?"

6 "Answer: No, not that I recall."

7 "Question: Did she ever tell you guys in a meeting that  
8 something in connection to the report should be, in her  
9 opinion, referred to the DA?"

10 "Answer: I don't recall that."

11 (As read.)

12 Where is the evidence in the first instance that this  
13 actually ever happened?

14 Didn't happen.

15 So then we go to the next issue about this; about whether  
16 or not it happened. Let's look at the document Exhibit 6 at  
17 page 102. Now, I remember that this document was almost  
18 impossible to decipher, but I remember there were a couple of  
19 people who came in and testified exactly what this document  
20 was. And the clear unambiguousness of this document is: It's  
21 an opinion. It's an opinion from City Attorney, basically  
22 stating *This is what I understand the rules and regulations*  
23 *provide.*

24 And with regard to the passage that talks about the DA, it  
25 says that the Council's role is to set policies and make budget

1 decisions. Council also can censure a Councilmember on direct  
2 CAO to seek investigation and action by DA.

3 So the only policy issue revolves around whether to go to  
4 the DA; whether to expend resources to retain an independent  
5 investigator; and whether Council wants to go on record with a  
6 policy that mirrors Charter 21, although that is not necessary.

7 Now, what is it that plaintiff told us?

8 Plaintiff tried to tell us this that this was language to  
9 be inserted into the agreement, into the document.

10 You can read it for yourself, and you can see that that's  
11 nothing more than an opinion. And that's consistent with what  
12 Fred Blackwell said. That's consistent with what  
13 Deanna Santana said. And quite frankly, to the extent  
14 plaintiff says that's the language she was talking about, it's  
15 consistent with what she said.

16 There is no evidence in this record whatsoever that anyone  
17 attempted to coerce her or to force her into putting language  
18 in that was untrue. There's no evidence of anyone suggesting  
19 it to her.

20 But what we do know is that the final report, when it was  
21 finally created as a final report, it contained the language --  
22 and this is a report that plaintiff, herself, says was  
23 something that she could stand by, and that she was fine with,  
24 and she didn't have any problems with it.

25 Well, if you look at that report at page 876, it goes on

1 to state, "facts related to inappropriate actions on the part  
2 of staff or the Vice Mayor." And it's talking about in the  
3 connection of, "Staff notes that if the City Council requires a  
4 report on past incidents, that the City Council directs the  
5 City Administrator to allocate funding for an independent  
6 review that includes, among other things, facts related to  
7 inappropriate actions on the part of staff or the Vice Mayor."  
8 That's consistent with what she said she wanted. That's  
9 consistent with everything that we've seen.

10 Let's move forward.

11 Claim Two. The City Council.

12 I'm going to tell you again -- and I'm going to show you,  
13 also -- why what they're saying just isn't true, and why  
14 there's no factual support for it. So when I come back to this  
15 first issue that we just looked at in the elements of proof,  
16 that Santana, acting on behalf of the City Council, believed  
17 that Preston disclosed information, refused to participate in  
18 acts -- there's no evidence for that for that first item; is  
19 there?

20 That Preston disclosure of information or refusal to  
21 participate in these activities was a contributing factor in  
22 City of Oakland's decision to discharge Preston. There is no  
23 evidence of that, either. No one came and testified that, some  
24 19 months later, someone wanted to fire her because of  
25 something that happened in February of 2012. There's no

1 testimony about that.

2 And Santana's conduct acting on behalf of the City was  
3 substantial factor in causing harm.

4 There's nothing there.

5 Let's go to this one. She confirmed, first of all,  
6 because she believed that doing so would be committing perjury.

7 Let's look at what happened here. No evidence this ever  
8 occurred. No evidence Santana believed Preston was refusing to  
9 participate in an act made unlawful by state or federal law; no  
10 evidence that Preston even believed a violation of law was  
11 taking place of a federal or state nature. No evidence of  
12 Santana terminating her because of this.

13 This is what I did. And I could be wrong. I tried my  
14 best to sort of type out exactly what's on that tape, so that  
15 you could see it, as opposed to just listening to it, because  
16 sometimes our eyes catch things that our ears just don't. And  
17 sometimes it's vice versa.

18 And I can tell you now you're going to read it and you're  
19 going to say, *Oh, Mr. Lafayette didn't catch that phrase.* And  
20 there's probably some truth in that. It's not intentional,  
21 but --

22 So this is what I did. I get to this point and I say,  
23 Brooks. That's not --

24 You see, Santana says, "The staffing configuration in the  
25 supplemental memo deletes the director through further

1 discussion." Through further discussion. Through further  
2 discussion. So she's explaining in the very first instance,  
3 through further discussion, the OPR Director suggested that the  
4 Director who oversees the community center -- the Rainbow  
5 Community Center -- can oversee both sites. She's already said  
6 that there is now something that's happened through further  
7 discussion.

8 Now what happens?

9 *Brooks: That's not true. In fact, I can tell you that*  
10 *unless they intend to increase the salary of the site director*  
11 *of Rainbow, that he cannot and has not indicated that he*  
12 *cannot, and that was ever communicated to me. Again, the City*  
13 *Administrator gave me her word when we met on the 22nd or 23rd*  
14 *of last month that we could maintain the staff that was there.*  
15 *That's the issue: That we could maintain the staff that was*  
16 *there. That's the issue.*

17 And let's see what happens.

18 And that's when Ms. Santana said, *That's not true. That*  
19 *sentence is not true.*

20 And we're going to track it through the rest of this  
21 conversation, and we're going to see exactly what happened  
22 here. That's absolutely true.

23 *Ms. Santana: What we said -- and Fred and LaWanna were in*  
24 *the room. I would ask for them to assist me with this set of*  
25 *facts -- what we said is that we would fold them into an*

1 existing open recruitment and they need to meet minimum  
2 qualifications.

3 Ms. Brooks: That's absolutely correct, but I was to  
4 maintain -- it was to maintain staffing that was in place.

5 There was no conversation -- there was no conversation  
6 about having -- so again, her phrase is, "to maintain staff  
7 that was in place."

8 Now they're talking over each other.

9 Ms. Santana: The report already notes that we know for a  
10 fact that some did not meet minimum qualifications. I do  
11 believe in that conversation we raised it with you.

12 Brooks: No, you did not. No, you did not.

13 Now, what is she saying?

14 You did not raise with me that some of these people didn't  
15 meet minimum qualifications.

16 Miss Santana: I would ask either LaWanna or Fred to  
17 confirm the facts, because we did spend time on how we were  
18 going to begin the transition.

19 So what is it that she's calling Ms. Preston up for?

20 She's calling Ms. Preston up there to confirm that they  
21 met with her, and they told her that some of these people  
22 didn't meet minimum qualifications -- that's the issue -- and  
23 that not all of these people were going to be able to be there.  
24 That's the issue.

25 Let's look and see what happens --

1       *Brooks: --*

2       *-- before Ms. Preston gets up there, and after Ms. Santana*  
3 *has asked her to come up there.*

4       *Brooks: We talked very specifically about the staff that*  
5 *was in place. There was no conversation about having the*  
6 *Rainbow Center Director.*

7       *Santana: LaWanna, could you please -- who was responsible*  
8 *for overseeing the staffing transition side?*

9       *So, now, in between the two LaWannas, a new issue is*  
10 *thrown in. And what do we get what? Does LaWanna come up and*  
11 *say?*

12       *Good evening, Councilmembers. At the meeting with*  
13 *Councilmember Brooks, we did discuss maintaining the staff*  
14 *ratios in the Center so that all of the programs that were*  
15 *current programs that were there could be facilitated. As the*  
16 *City Administrator stated there in previous reports, it was*  
17 *clear there were certain employees that were currently working*  
18 *there that did not meet the minimum requirements.*

19       *As of that moment when she made that statement, she had*  
20 *answered the question for which she was called up there to give*  
21 *opinion on. That's it. That was it.*

22       *So now what happens?*

23       *Ms. Brooks: There was one employee that did not meet the*  
24 *minimum. And we talked about her, but we've never discussed*  
25 *the Rainbow Director.*

1        Now it's going to the Rainbow Director. And what happens  
2 there?

3        *Preston: At that meeting we did not discuss the current*  
4 *Director at Rainbow taking over both facilities. That was*  
5 *proposed to us after that meeting by the --*

6        And then Ms. Brooks jumps in again. But look there.  
7 *Through further discussion, the OPR Director --*

8        You see, there was nothing here. There was nothing here  
9 that in any way indicated that someone asked her to come up  
10 there and perjure herself. Didn't happen. You want to hear  
11 it?

12 (Audiotape was played but not reported.)

13        **MR. LAFAYETTE:** So now -- so what is it that  
14 Ms. Santana thought happened after that meeting?

15        You see. And that's where you get to look at Exhibit T.  
16 Exhibit T is the e-mail exchange that takes place right after  
17 that meeting. And it actually tells you what it was that  
18 Ms. Santana thought.

19        So here's the first thing Ms. Preston writes. "I think  
20 you came out of the meeting looking good. You took the high  
21 road, and held your position. I am sorry I had to contradict  
22 you tonight. I hated doing it, but I had to tell the truth. I  
23 can't read that. I hope you understand."

24        So now what happens after that? Does Ms. Santana confirm,  
25 *Yes, I agree that you contradicted me. Yes, I agree that you*



1 were talking about a violation of state law. Yes, I agree that  
2 you were talking about a violation of federal law?

3 Absolutely not.

4 What she does is she says, You did not contradict me. I  
5 was answering specifically to her comment re: staff staying. I  
6 did agree with you when you commented on the Director. I  
7 thought you heard me. We did not agree to keep her staff. We  
8 did agree to assist them applying for the position, and noted  
9 that some did not meet the MQs. That needed to be clarified,  
10 which we -- both of them did. You did tell the truth. So did  
11 I. Not clear where your concern's coming from.

12 Preston: The comment about having the Director of the  
13 Rainbow Recreation Center manage both sites -- we had that  
14 discussion with Audree; not Brooks.

15 Answer: Right. And I agreed with you.

16 So now, under the circumstances, how can plaintiff meet  
17 her elements of proof, and say that, one, the -- one, that  
18 Santana, acting on behalf of the City, believed that Preston  
19 refused to participate in acts? That's completely unsupported  
20 by this e-mail stream. It's contradictory to that e-mail  
21 stream.

22 How about that Preston's disclosure of information and  
23 refusal to participate in these activities was a contributing  
24 factor?

25 No. In order for you to reach that, let me show you what

1 you've got to overlook. You've got to overlook this time line,  
2 you see; something I talked about at the beginning. That's  
3 March 6 and February 24.

4 You'd have to overlook that e-mail that we just looked at;  
5 that assignment that she got to be the transition team; that  
6 April 25, 2012, criticism that she received from Scott Johnson  
7 concerning her activities with Katano Kasaine.

8 And you'd have to overlook something else that they keep  
9 talking about: That evaluation, where she says she was  
10 amazing. How could she possibly be getting an evaluation in  
11 May of amazing, when she said that she is the victim of  
12 retaliation from activities in February and March? It is  
13 nonsensical. It is nonsensical.

14 5/11. Criticisms of others.

15 7/2012. Other criticisms. Other criticisms. Other  
16 criticisms.

17 And then we get to the internal investigation, which --  
18 she would want you to ignore all of those things that took  
19 place, and say that none of that had anything to do with her  
20 termination. None of it.

21 No. That's not rational. That's not reasonable.

22 Claim Three. The Fire Department. So when does that take  
23 place? You see, the Fire Department is right about here  
24 (indicating).

25 What do we know about right about there?

1 We know that the decision had already been made to  
2 terminate her.

3 We know that because three people testified to that, and  
4 nobody has contradicted that at all. At all. Nothing. We  
5 know that Deanna Santana says that once this thing hit with  
6 that internal investigation, that was it for her. And we'll  
7 talk about why that was it for her, but that was it. And we  
8 know she talked to the Mayor about it, and the Mayor confirmed  
9 it. And we know that she talked to City Attorney about it, and  
10 the City Attorney confirmed it.

11 Where is the evidence that that did not happen? Where is  
12 the evidence that the events which would rationally lead to a  
13 decision like that did not occur?

14 It's not there.

15 But let's look at it, anyway. Preston claims that she  
16 disclosed that the City of Oakland was entering into contracts  
17 with Firefighters' Local 55 without the necessary approval from  
18 Council, because she believed that doing so would be a  
19 violation of California Government Code.

20 I'm going to show you why that's absolutely not true.  
21 Okay?

22 There's no reporting of a violation, no causation, no  
23 statement to Brooks. The statement to Brooks was a  
24 fabrication.

25 We'll talk about all three of those, but let's look at

1 these first. 2E. Exhibit 2E is the e-mail.

2 Kelvin, could you help me with that, please?

3 (Document displayed.)

4 **MR. LAFAYETTE:** You see, Exhibit 2E is the e-mail  
5 that she does not send to Deanna Santana. Exhibit 2E is the  
6 e-mail that she actually sends to the City Attorney's Office  
7 instead.

8 Now, I -- I pondered. I said, "Well, why is she doing  
9 this? Why is this happening?"

10 And I'll tell you why it's happening. These tables aren't  
11 closing. The negotiations are not taking place. And she's  
12 receiving criticism for that. She's not going to the labor  
13 budget meetings. All of the things that are supposed to be  
14 happening are not happening in June, and people are bringing  
15 these to her attention. And now you've got one more thing  
16 that's come to roost with regard to what her primary function  
17 is: These negotiations.

18 And she already knows that she's on the bubble -- or at  
19 least, that's the way she sees it -- because of this Internal  
20 Affairs investigation. So the last thing she could do is be  
21 criticized one more time for one more thing that she's done  
22 wrong.

23 So rather than go to her boss with this, what does she do?

24 She sends this document to the City Attorney. And it --  
25 there's nowhere in here that she says anything about a

1 violation of state or federal law. Look at what she writes.

2 "The MOU has explicit language that this provision expires  
3 on a specific date. Does the Fire Chief have the authority to  
4 extend a provision in the MOU without Council authorization?"

5 MOU. Council.

6 "Can the Fire Chief reduce the number of employees a  
7 premium to applicable -- to -- in order increase the premium  
8 pay without Council authorization?"

9 (As read.)

10 The only thing she's talking about is an agreement between  
11 the union and the City, and a City statute or ordinance or  
12 something that talks about what people can and cannot do.  
13 There is no reference here to a state or a federal violation.  
14 And there is nothing where she's indicating such by this  
15 communication. That automatically wipes this issue out. It's  
16 not there. There's no evidence to support it.

17 So what happens after that?

18 Then she writes this e-mail. "See attached." This is the  
19 one that she sends to Desley Brooks. This is Exhibit 21 [sic].  
20 (Document displayed.)

21 **MR. LAFAYETTE:** Exhibit 2I.

22 And when she sends out Exhibit 2I --

23 I want you to think about this when you start thinking  
24 about credibility -- okay? -- because when you start looking at  
25 something in this case, and the only person who stands up for

1 it is Ms. Preston, I want you to think about this document.  
2 And I want you to think about Winnie Anderson when you think  
3 about this document.

4 It says here, "See attached. The Fire Chief conducted a  
5 meet-and-confer with Local 55, signed a TA to extend an  
6 economic provision of their MOU."

7 Okay. Where is it that her Department was implicit [sic]  
8 in this -- or complicit? Where is it? Where is she saying  
9 that?

10 She's not. Okay?

11 "After she completed it, she convinced the newest member  
12 of my staff to sign it."

13 That's a complete fabrication. Winnie Anderson didn't  
14 meet with the Chief. And she said it. And Winnie Anderson  
15 said the Chief didn't make her do anything. And the Chief said  
16 the same thing.

17 Where is that coming from?

18 You see, that's just a complete fabrication. And when you  
19 see a complete fabrication on something like that sent to a  
20 sitting City Councilperson, you have to question everything  
21 that that person says at that point, because that's just not  
22 true.

23 And then she goes on to say, "You know I dealt with that  
24 employee."

25 Well, where is the testimony that she dealt with that

1 employee?

2 That didn't happen, either. None of that happened.

3 So -- and then to the extent that she talked about it  
4 further, she's talking about a city resolution. She's not  
5 talking about a state statute or a federal statute. She's  
6 talking about a city resolution. 5548881. "Only the City  
7 Administrator and I have that authority."

8 So the only thing she's talking about is: They didn't  
9 follow a city ordinance.

10 So -- but the real deal is by the time this happened, she  
11 can't say that this caused her to be fired, because the  
12 decision had already been made; it was just deferred.

13 Claim Four. TPT.

14 Preston claims that she disclosed that the City of Oakland  
15 was failing to collect Temporary Part Time employee union dues,  
16 because she believed that the failure was a violation of the  
17 California Government Code.

18 I didn't hear that. There was a bunch about that that I  
19 didn't hear, so let's talk about it. First of all, she didn't  
20 do the disclosure. She can't show that that's why she was  
21 terminated. No evidence was taken into consideration. And the  
22 decision was made before this ever happened.

23 So let's take a look at what we're talking about here.

24 Lets -- let's take a look at Exhibit 3G.

25 Could you give me that one, Kelvin?

1 (Document displayed.)

2 **MR. LAFAYETTE:** Let's see who disclosed what to who.

3 Can you make that bigger up there?

4 Thank you. Good. Yes.

5 You see, this is the e-mail -- okay? -- that contains that  
6 grievance. Joe Keffer sends it to Ms. Preston, Ms. Santana,  
7 Mayor Quan.

8 How can she disclose that which was already disclosed?

9 Doesn't make sense; does it?

10 You see, red herrings -- I don't like to talk about red  
11 herrings. I particularly don't like the history of red  
12 herrings -- okay? -- but this whole thing is nothing more than  
13 one big red herring. That's what this is.

14 And to talk about what happened in the August 6th  
15 meeting -- that's nothing more -- where does that relate to  
16 either one of these four claims? It does not.

17 To talk about looking at e-mails -- that's not one of  
18 these issues, either. That's something to get everybody upset;  
19 to talk about things that don't relate to these issues; to try  
20 and get people warmed up to say, *Let me do something bad to the*  
21 *City*. It's a red herring, and it's wrong. It just flat-out  
22 wrong to do it. Why would you bring all of that into this  
23 courtroom and this case for any other reason? Wrong.

24 That -- she didn't disclose anything. It was already  
25 done. It came in with the e-mail that everybody got it.



1       What else is there that we have to talk about with this?

2       This whole concept about why she shouldn't do it -- that's  
3 not an issue in this case, about why she shouldn't do it; but  
4 I'm going to talk about it. She shouldn't have done it,  
5 because the person who would have just willingly given her the  
6 documents comes in and says, *She's converted this into an*  
7 *investigation of me. It's -- it's not what's in the union*  
8 *grievance; but she's made it an investigation of me. And I*  
9 *don't trust her. I don't trust her motives.*

10       Now, at this point in time did Ms. Santana have reason to  
11 question her motives, as well?

12       Yes. There had been issues between her and Katano Kasaine  
13 in the past; but more significantly, there's the internal  
14 investigation going on. And the internal investigation is  
15 about her activities as they relate to investigations: Ripping  
16 up statements; telling witnesses they can't participate, and  
17 for the most illogical reasons.

18       It would seem basic to anyone: If the investigator is a  
19 witness, find another investigator. You do not deep-six an  
20 investigation simply because the investigator that you want to  
21 use is compromised. Find another investigator. Find another  
22 investigator. Don't tell someone they can't participate, and  
23 as a result, the investigation can't go forward ever,  
24 particularly when it's someone who you're friendly with.  
25 That's not what you want. That's not the type of reasoning and

1 thinking that you want from a person who has such a supreme,  
2 august position; an important position.

3 That thinking, by itself, should justify being terminated,  
4 because it means you don't have a clear understanding of your  
5 role, your mission, and your obligation.

6 No evidence that Preston even believed violation of law  
7 was taking place of a federal or state nature. Where is that?  
8 Where is it? There's nothing.

9 Now, none of those were met.

10 See, this is the City's affirmative defense. We only get  
11 here -- we own only get to this -- if, after all of the  
12 evidence you've heard, you believe that one of those four  
13 things worked. If you believe that they met the elements of  
14 one of those four things, then you get here. And you don't get  
15 here unless you've done that, because you if you conclude that  
16 she hasn't made out her case, you close the book and the look  
17 at the Jury Instructions. We'll walk you through it, and  
18 you'll see it. You don't go to this.

19 But if you do get to this -- if for some reason you  
20 believe she's made one of those four things work -- then what  
21 the law says is Ms. Preston proves that her disclosure of  
22 information or her refusal to participate in an unlawful act  
23 was a contributing factor to her termination.

24 You see, first she has to prove that it a contributing  
25 factor, where there's no evidence of it. Then the City of

1 Oakland is not liable if it proves clear convincing evidence  
2 that it would have terminated Preston anyway for legitimate,  
3 independent reasons.

4       You see, counsel on the other side tried to put this in  
5 front of everything else. He tried to put the horse -- the  
6 cart in front of the horse. That's not where this goes.

7       And so have we proven that? If that's where we wind up,  
8 have we proven that?

9       Yes, we have. First of all, she was at will. There was  
10 no progressive discipline. She said that.

11       There were frictions with co-workers; frictions with  
12 unions; internal investigations. The did an internal  
13 investigation. So let's get a little bit of detail in here.  
14 Let's not just point at the surface there.

15       She responded in May of 2012 to criticisms that  
16 Katano Kasaine had, where she acknowledged that, in those  
17 criticisms that Katano Kasaine had about her, that there were  
18 allegations of bias; allegations of -- and she writes it on May  
19 11 where she says, "Over the last few weeks you have stated on  
20 several occasions that I need to learn how to get along with  
21 Katano Kasaine. The comments indicate that I'm not a  
22 professional, and have difficulty communicating with staff who  
23 may disagree with me."

24       I thought I heard that no one said -- told her that she  
25 was unprofessional.

1 She writes it in her own memo.

2 I heard her say that she was unaware of these things.

3 It's reflected in Exhibit 1A, as she gives explanation.

4 And then, in true form, what does she do?

5 She attacks everybody else who's crossed her in this memo.

6 You can read it. You'll see it. She attacks everybody else

7 after she's criticized.

8 The unions complained about her. The unions complained to  
9 Chief Howard Jordan that she was trying to undermine the City's  
10 negotiating positions. And he brought that to her attention.

11 Scott Johnson talked about these people who came into his  
12 office -- 20 of them -- past his assistant, into his physical  
13 domain. And the criticisms they were bringing was about  
14 Ms. Preston. And I saw counsel try hard to try and make it  
15 sound like it was something else other than that, but that  
16 didn't fly. It was about Ms. Preston.

17 And then you get to Sonia Lara. Sonia Lara was simple.  
18 "Don't ask me to lie. Don't ask me to destroy documents.  
19 Respect me."

20 And every step of the way she treated her like she was  
21 something other than a real person. First you take her  
22 statement, and you tear it up. That's the first thing you do.

23 Then when you realize there's an Internal Affairs  
24 investigation -- a Police Department investigation -- you bring  
25 her in with a person who's accused. And you -- *We're all*

1 *girlfriends, and you can tell us what happens.*

2       The first thing that Ms. Preston should know is an  
3 investigation needs to be kept confidential, because if it's  
4 not kept confidential, then information leaks; people know  
5 what's going to be asked of them; their stories change, morph,  
6 become something different. What a horrible thing to do.

7       And then after she has another interview, you call her in  
8 again and pinky-swear?

9       It's just wrong. And it's wrong for anybody; but the  
10 person who says that they're the one to conduct investigations  
11 for the entire City -- it is so horribly wrong, that, by  
12 itself, it is justification for terminating her. Period.  
13 Clear and convincing. It couldn't be more clear and convincing  
14 than that.

15       I'm not going to summarize all of them, but I'll talk  
16 about these damages for a second. Did you hear anybody come in  
17 and say that they witnessed her experience some emotional  
18 distress? No. Only person who came in here was somebody who  
19 said that that's what she told them. Where are these people  
20 who could come in and say they saw this, or they saw that, or  
21 they heard this, or they heard that? No one. So if you were  
22 going to believe that, then the only person you can trust your  
23 belief in is Ms. Preston.

24       Then we get to the economic loss.

25       The Court instructed you on what an expert witness is. An

1 expert witness is paid. Period. End of story. They're paid.

2 But I want you to compare the difference between the two.  
3 Was there one expert witness who says that she's worked with a  
4 particular lawyer in this case -- I don't know -- as much as 20  
5 times? I did the math. \$85,000 that she's gotten from that  
6 one lawyer. I did the math. And when that one lawyer asked  
7 her to do something that a Court -- that a Judge in this Court  
8 told her was inappropriate for her to do, she sat here in this  
9 witness chair and she said she did it anyway. And each and  
10 every opportunity that she had to try and make these damages  
11 look like something that they were not, she did it.

12 On the other hand, Mr. Cohen comes in, and he's quick.  
13 I'll be the first one to tell you he's a quick man. He's got a  
14 quick answer. He's ready for anything that you've got for him,  
15 but he did not say something that anybody came in this  
16 courtroom and impeached; did he? And when he said that there  
17 was reciprocity between City and County of San Francisco and  
18 PERS, you didn't get anyone to come in this courtroom and say  
19 that was wrong; did you?

20 When he said that they could work back and forth, and the  
21 money could be used in those different ways, you didn't hear  
22 anybody come in this courtroom and say he was wrong; did you?

23 And you didn't hear anybody come in this courtroom and  
24 criticize the analysis that he provided. Period. You didn't.

25 And then he pointed out that his records indicated that

1 this was not the first time that Ms. Preston had taken money;  
2 that when she leaves places, she takes the money out. Now,  
3 here's the question I have. Where is the funds-transfer slip  
4 that shows what she used the money for? How do you know that  
5 she didn't roll it over into some other account or fund? How  
6 has she proved to demonstrate to you what she did with this  
7 money, other than her saying, *This is what I used it for?*

8 You don't. You don't.

9 Credibility of witnesses. This is where we wind up. I  
10 will remind you that before we leave this, Mr. Cohen said that  
11 if by chance you should reach the point where you conclude that  
12 we did something wrong and we cannot prove by clear and  
13 convincing evidence that we have would have fired her anyway --  
14 if you go through all of that and you get here, it's only  
15 \$154,000, but please don't go there.

16 Credibility of witnesses. In considering the testimony of  
17 any witness, you may take into account the opportunity and  
18 ability of the witness to see or hear or know the things  
19 testified to, the witness' memory, the witness' manner while  
20 testifying. I like four: The witness' interest in the outcome  
21 of the case, and any bias or prejudice. Whether other evidence  
22 contradicted the witness' testimony. The reasonableness of the  
23 witness' testimony, in light of all of the evidence, and any  
24 other factors that bear on believability.

25 And I'm going to ask you: How many times did Ms. Preston

1 actually get contradicted in this room? Fred Blackwell  
2 contradicted her. Deanna Santana contradicted her. Barbara  
3 Parker contradicted her. Sonia Lara contradicted her.  
4 Winnie Anderson contradicted her.

5 Can you believe her? She has an interest in the outcome  
6 of the case. She is biased. Look at her testimony; the  
7 reasonableness of the witness' testimony in light of all of the  
8 evidence. Doesn't exist; does it? It doesn't.

9 In deciding the facts of the case, you may have to decide  
10 which testimony to believe, and which testimony not to believe.  
11 You may believe everything a witness says, or part of it, or  
12 none of it. So --

13 **THE COURT:** Let's bring it to a close.

14 **MR. LAFAYETTE:** Thank you, Your Honor.

15 At the end of the day, the City didn't do anything wrong;  
16 and there's no evidence that it did. Plaintiff just puts up  
17 some stuff and says, *This is what I did*, but there's no  
18 evidence that anybody saw that as a violation or, more, that  
19 anybody used that as a reason to fire her. She's not proven  
20 that. She has not shown that. And that was her burden of  
21 proof.

22 Now, in a couple of minutes I'm going to sit down. I hate  
23 sitting down, because I always think I've left something on the  
24 floor, and I should have talked about it. I always think  
25 there's something in your mind that you saw that I just didn't



1 key on, and I left it, and I go back over and I fret; but I've  
2 got to sit down. The Judge is going to make me sit down. Let  
3 me sit down.

4 So I'd like to thank you. And I'd like to remind you of  
5 one thing. Ms. Preston is not entitled to anything from the  
6 City of Oakland. I'm going to ask you to go back there and  
7 come back and tell her, because I want to tell other people  
8 that this is not an easy pick. You don't get a chance to just  
9 hold stuff up like this and then say, "I've got a case against  
10 you, so I'm going to sue you and get money from you."

11 It's not right. And let's stop it now.

12 I'd like to thank you for your attention. If I did  
13 something that offended any of you in this courtroom, I  
14 apologize to you. Sometimes I can become a bit over the top.  
15 And I don't -- please don't take that out against my client.  
16 Thank you a lot.

17 **THE COURT:** Thank you, Mr. Lafayette.

18 Let's take at least a stretch break. If any of the jurors  
19 need to take a rest room break, please take one, as well.  
20 Everyone please stand up and stretch. And Ms. Preston will get  
21 the final word.

22 (Pause in proceedings.)

23 **THE COURT:** Mr. Lafayette, the exhibit table of  
24 contents that you had -- did that make it to the courtroom?

25 **MR. LAFAYETTE:** I think so, Your Honor.

1           **THE COURT:** All right. Our jurors have returned.  
2 Mr. Siegel you may proceed.

3           **MR. SIEGEL:** Thank you, Your Honor.

4                           **REBUTTAL ARGUMENT**

5           **MR. SIEGEL:** I don't want to get all literary on you,  
6 but what was it that Shakespeare said about a tale full of  
7 sound and fury -- in this case, especially fury -- signifying  
8 nothing?

9           Let me -- I'm not going to take much time. I want to be  
10 real quick. At some of the points, Mr. Lafayette said we  
11 reversed the burdens. You know, his seven, my five, were the  
12 same. There's really only one issue in this case. We all know  
13 that she was an employee. We all know she complained to  
14 Santana. We know that she thought that what she was seeing was  
15 unlawful. We know she was fired. We know she was harmed.

16           The only issue -- and I urge you to concentrate -- is:  
17 Were her protected activities a contributing factor to the  
18 decision to fire her? The rest, no one disagrees on.

19           So quickly, RTC -- so there was nothing there.

20           Well, we know Ms. Santana asked Ms. Parker if she could do  
21 an investigation of Desley Brooks. We know Ms. Parker said,  
22 *Yeah, you can do an investigation.*

23           Ms. Preston didn't make any of that up. That's in the  
24 documents in front of you.

25           We know that Ms. Santana and Ms. Preston discussed that

1 language, because Ms. Preston told you that she did. That's  
2 all. Very simple. What did Ms. Santana say? She didn't  
3 understand; she didn't remember.

4 And let me say about testifying on the stand: Who is the  
5 witness who would answer question with, "I don't know."

6 Or does that IAD report -- did the Police Department find  
7 that Ms. Preston was credible?

8 *Oh, I don't know. That says something about -- oh, yeah,*  
9 *it does. Finally, you know.*

10 And how many times did that happen when Ms. Santana was on  
11 the stand, when you would ask her a question, and she wouldn't  
12 give you a straight answer?

13 How many times did that happen when Ms. Preston was on the  
14 stand? I don't think any times.

15 The issue of the City Council. Watch the tape. Did  
16 Santana and Brooks disagree? Any question about that? Did  
17 Ms. Preston stand up in front of the City Council and say to  
18 Ms. Santana, *I can't confirm that. I don't agree?* I mean, how  
19 can Mr. Lafayette say we made that up? It's there on TV. It's  
20 clear in front of you. And she was asked to come up.

21 Now, he -- well, a couple of things about that that I  
22 think are almost comical. He says, *How could she claim that*  
23 *lying to the City Council would be illegal, when she was not*  
24 *sworn to tell the truth under penalty of perjury?*

25 You know, the flip side of that is, of course it's okay to

1 lie, as long as you're not sworn in in a courtroom; but that  
2 wasn't Ms. Preston's standard when she got up in front of the  
3 City Council either time, as she told the truth.

4 But again, go back to Fred Blackwell for a half a second  
5 because he was asked on the stand. Because -- remember, she  
6 said Fred and LaWanna both come up. He didn't show up. And he  
7 told you why. He said two things: One, *I didn't want to get*  
8 *between Ms. Brooks and Ms. Santana*; and secondly he said, *What*  
9 *Deanna Santana asked us to confirm was not as black and white*  
10 *as she put it*. And he didn't want to get up and affirm her  
11 where it wouldn't have been true, and he didn't want to  
12 contradict her and get --

13 And what do we get? That e-mail after the fact. Even in  
14 the after-the-fact e-mail, they disagree. Ms. Santana says,  
15 *Oh, no, we didn't agree*. Ms. Preston says, *Yeah, we did,*  
16 *because the information that we disagreed about was given to*  
17 *Audree, who was the Park and Rec Director, not to Ms. Brooks.*  
18 So clearly they didn't agree.

19 And then what's the theory here? That back in March of  
20 2012, Ms. Preston was thinking of how she could plan this  
21 lawsuit, so she set this up with these e-mails and  
22 conversations, thinking that she was going to be fired 18  
23 months later, and trying to cover herself? That doesn't make  
24 sense, either.

25 Mr. Lafayette showed you that time line, and -- with all

1 of those little dates and jots on it, which apparently are  
2 supposed to convince you that there were complaints about  
3 Ms. Preston on all of those dates.

4 Well, you're going to get a binder with all of the  
5 exhibits that were introduced in this trial when we're  
6 finished. And ask yourself: Does that time line represent  
7 anything more than Counsel's imagination? Because there's not  
8 documentation that corresponds to each of those lines. And  
9 that, I think, goes to the question of: When was there a  
10 decision about the termination?

11 Well, sure, Ms. Santana says it was in the spring. And,  
12 sure, Ms. Quan, who doesn't even think that Ms. Preston was  
13 terminated at all, agrees that this nontermination was  
14 discussed in the spring.

15 But I ask you again to use the most important rule in  
16 court, which is the rule of common sense. And here, this is  
17 the question. You think that Ms. Preston is an absolutely  
18 rotten, lousy, untrustworthy, hated-by-the-unions,  
19 hated-by-management -- the worst labor negotiator in the entire  
20 East Bay, if not the whole Bay Area. And you decide to fire  
21 her, but you're going to keep her around for another four  
22 months so she can engage in all of these negotiations that  
23 she's unqualified to do, untrustworthy to do, can't be trusted  
24 to do, when everybody hates her.

25 Now, that may be the most nonsensical explanation of all

1 of those that you've heard. And it didn't happen. And nowhere  
2 did she say when they fired her, "You're being fired because  
3 you're a rotten negotiator." Nowhere did they say, even 14  
4 months after the termination in the interrogatory answers under  
5 penalty of perjury --

6 And "penalty of perjury" does mean something. When you  
7 sign under penalty of perjury, that better be true. And you'd  
8 better not show up in court a year and a half later and  
9 contradict yourself and make up stuff down the line.

10 They never said they fired her because she tore up  
11 Sonia Lara's witness statement; they didn't say that until they  
12 got here. There's nothing in the record: You're fired because  
13 of that.

14 And there's a reason why they didn't say it: Because the  
15 Internal Affairs Division of the Oakland Police Department, who  
16 Miss Santana asked to investigate Deb Grant and  
17 LaWanna Preston, concludes, as she was forced to admit  
18 reluctantly, that there was no fault on either of their part,  
19 and that both of them were credible. A story that's made up in  
20 court. A story that's made up in court.

21 Did she think that there was a violation of the law?

22 In Exhibit 18, which is one of her memos regarding the  
23 Fire Department grievance that she writes to Ms. Parker and to  
24 Ms. Santana, when Ms. Santana's pooh-poohing this whole thing  
25 about this grievance, what Ms. Preston writes -- it's there for

1 you in black and white. What do we say to Local 55? Is it a  
2 ULP? "ULP" stands for "unfair labor practice," which is a  
3 violation of the Meyers-Miliias-Brown Act. That's state law;  
4 not a violation of the Oakland City Charter or a city  
5 ordinance; a violation of Meyers-Miliias-Brown.

6 Yep. She made a mistake; one mistake. And I put that up  
7 earlier. She was wrong; that it wasn't Chief Reed who  
8 convinced Winnie Anderson to sign that Tentative Agreement; it  
9 was Chief Reed's labor person, Ms. Trinette. She's the one who  
10 convinced Winnie Anderson. So, you know, we'll fall on our  
11 sword on that one if you think it's an important point.

12 You know, regarding the SEIU dues grievance, what  
13 Ms. Preston did -- it wasn't like she told people, *Hey, this is*  
14 *breaking news*. What she told people is, *This is a problem, and*  
15 *we have to solve it*.

16 And if you look at those e-mails one by one by one, where  
17 she's trying to get Ms. Santana to take it seriously, get  
18 Ms. Parker to take the seriously, get the whole crowd to take  
19 the seriously, and then discloses in one of the other e-mails  
20 that's in front of you that Ms. Kasaine was trying to interfere  
21 with the grievance resolution by talking to the union  
22 representative --

23 And what did she say in that e-mail? Again, *This is a*  
24 *violation of Meyers-Miliias-Brown*. So to accuse her of waiting  
25 until years after the fact to point out that what the City was

1 doing was violating state law is directly contrary to the paper  
2 in front of you.

3 And again, I just want to stress that the concerns  
4 regarding Ms. Kasaine were not so much that the dues weren't  
5 being collected, but that she was committing an unfair labor  
6 practices.

7 Now again, to finish up here, she was at will. True, she  
8 was at will; but as the Court's instructions make very clear,  
9 there is an exception to the at-will doctrine -- is that even  
10 though an employee may be technically at will, you cannot fire  
11 them if one of the reasons for doing so is whistle-blowing; if  
12 that's a contributing factor.

13 You have to look at the timing of these events,  
14 particularly October 1 and October 3. You have to look at the  
15 hostility that developed once Ms. Preston started to contradict  
16 Ms. Santana. And you will see that that hostility developed:  
17 Her exclusion from meetings, her exclusion from one-on-one  
18 conversations, her being taken off the local SEIU grievance,  
19 and so on. So I think the facts are there.

20 I want you to please spend as much time -- make up your  
21 minds as individuals. You need to you need to deliberate. You  
22 need to deliberate individually; to try to agree; but there's  
23 no requirement that anyone give up their deeply held  
24 conclusions about the case, even if they're a minority in the  
25 deliberations.



1 Ms. Mehta reminds me that she disclosed the SEIU grievance  
2 to the City Council on October 1. That's a disclosure. They  
3 didn't know about it. Desley Brooks asked her about it, and  
4 that was actually the incident that led to her head being cut  
5 off here.

6 I don't want to argue too much about the damages, but I do  
7 want to say again Mr. Cohen wanted to give them \$500,000 and  
8 credit for CalPERS benefits that Ms. Preston never got. He  
9 argues that she didn't bring in receipts for her mortgage  
10 payments. I mean, come on. Where's the requirement that she  
11 do that? What do they want to suggest to you; that she took  
12 the money and gambled, or did drugs, or something? I think  
13 that's the implication of saying, *Where are the receipts?* And  
14 I think that's slightly scurrilous.

15 And finally, I didn't hear Mr. Cohen say that there was  
16 reciprocity between San Francisco and CalPERS programs. In  
17 fact, his calculations, if you remember them, separated those  
18 two funds out separately. And we admit that, God willing, if  
19 she lives long enough and retires from San Francisco, she'll  
20 get that pension; but she'll never get the CalPERS pension  
21 unless you give her the value of it. Thank you.

22 **THE COURT:** Thank you very much, Mr. Siegel.

23 We've reached another milestone, which -- it's now time  
24 for the jury to begin its deliberations. So I'm going to ask  
25 you to return to the jury room to begin that process now.

1       The attorneys will remain here with me. It's going to  
2 take us a few moments to get the binder admitted documents in  
3 to you, and the video. So you may begin your deliberations  
4 before you get those, but you'll have to hold on for a minute  
5 before you receive them.

6       One thing, other than selecting your presiding juror, you  
7 need to decide quickly is the hours you wish to keep for your  
8 deliberations. During trial and at the beginning of this  
9 process, I told you your schedule would be 9:00 to 4:00, and  
10 that would be my default for your schedule for any  
11 deliberations. It's almost 4:00 o'clock. It's 15 minutes  
12 until. If you decided you wanted to stay longer -- and you  
13 must all be present for any deliberations -- if you wish to  
14 stay longer and you unanimously agree to that, I will force the  
15 parties to stay here and I'll stay here while you deliberate  
16 for a little while longer. If you wish to start earlier than  
17 9:00 o'clock tomorrow morning, and you all agree, I'll order  
18 the parties to be here and I'll be earlier than 9:00 o'clock.

19       That's something you must all agree to. And you can  
20 communicate that to my courtroom deputy. Then I'll be able to  
21 tell the parties when they need to be here and when they don't  
22 need to be here, because while you're deliberating, they'll be  
23 here, waiting for what you say. So if you can, confer with  
24 each other for a minute just about your schedule and let my  
25 deputy know. Meanwhile, we'll get the admitted documents in to

1 you in just a few minutes.

2 We're in recess.

3 (Proceedings were heard outside the presence of the jury:)

4 **THE COURT:** All right. The jurors are not present.  
5 So, counsel, I've got an evidentiary issue for you. I've  
6 received the admitted evidence binder. Mr. Siegel, I don't  
7 know if you've seen this document yet or not. It has a table  
8 of contents in the front. It's missing document 5J, which is  
9 in evidence. I don't know if you --

10 **MR. SIEGEL:** I haven't seen the binder.

11 **THE COURT:** All right. Here's another copy here. So  
12 why don't you come look at it?

13 **MR. SIEGEL:** Your Honor, have you checked it?

14 **THE COURT:** I have. That's why I'm telling you.

15 **MR. SIEGEL:** Oh.

16 **THE COURT:** So it's missing 5J. And it includes 2E.  
17 2E was referenced by the defendants during closing. It's not  
18 in evidence. It's similar to 2H, which is in evidence. And in  
19 the Plaintiff's Exhibit List there were some confusion about  
20 which one is 2H and 2E. And if you see on the table of  
21 contents, both are identified as being Plaintiff's Exhibit 18,  
22 but they're not both Plaintiff's Exhibit 18. So do you have  
23 something to tell me?

24 **MR. LAFAYETTE:** I have two 5Js, Your Honor, to put  
25 in.

1           **THE COURT:** Okay. You mean one for each binder?

2           **MR. LAFAYETTE:** One for each binder.

3           **THE COURT:** Mr. Siegel's got the other copy, so why  
4 don't you do one there?

5           And 69 is listed in the table of contents. And I don't --  
6 there it is. Okay.

7           So I confirm that everything that you each put in evidence  
8 is in the binder.

9           **MR. LAFAYETTE:** Okay.

10          **THE COURT:** The question is what to do about E. And  
11 I know you want to look at it before we get to that question.

12          **MR. SIEGEL:** And you've also confirmed that nothing  
13 is in binder that was not --

14          **THE COURT:** As far as I can tell.

15          **MR. SIEGEL:** 2E, your Honor, you said. I will defer  
16 to your record keeping.

17          **THE COURT:** 2E. So in the table of contents, 2E and  
18 2H are both listed as Plaintiff's Exhibit 18.

19          **MR. SIEGEL:** 2E. 2H. Those are both in evidence.

20          **THE COURT:** Well, by our records, 2E is not in  
21 evidence; but if you wish 2E to be in evidence and you agree to  
22 it, then that solves the problem.

23          **MR. SIEGEL:** 2E is -- yeah, I agree. Actually --

24          **MR. LAFAYETTE:** We both agree.

25          **MR. SIEGEL:** -- I referred to both of those.

